

January 4, 2021

Stephen Holley
Stillwater Capital I
4145 Travis Street, Suite 300
Dallas, TX 75204

Re: Development Agreement with City of Forney

Dear Stephen:

By this letter, I, Bobby Wayne Hilbert, as the sole owner of the approximately 1.14 acres located at 11237 County Road 212 (the "Property") further described in the accompanying metes and bounds description attached hereto as Exhibit A, hereby authorize Stillwater Capital to execute the Development Agreement with the City of Forney attached hereto as Exhibit B, in its capacity of contract purchaser of the Property and as my representative. I understand that the agreement will be recorded in the Kaufman County deed records and will run with the land.

Sincerely,



Bobby Wayne Hilbert

EXHIBIT A – PROPERTY DESCRIPTION

**ANNEXATION METES & BOUNDS DESCRIPTION
(HILBERT TRACT)**

BEING a 49,675 square foot (1.1404 acre) tract of land situated in the A. Hyer Survey, Abstract No. 203, Kaufman County, Texas, and being all of a called 1.14 acre tract of land described in the Warranty Deed to Bobby Wayne Hilbert, recorded in Instrument No. 2014-0010860, Official Public Records, Kaufman County, Texas, and being more particularly described as follows:

BEGINNING at the north corner of the said called 1.14 acre tract of land, and being on the southwest right-of-way line of County Road 212;

THENCE South 45°48'01" East, along the northeast line of the said called 1.14 acre tract of land, and along the said southwest right-of-way line, a distance of 103.50 feet to a point for the east corner of the said called 1.14 acre tract of land;


THENCE South 45°00'55" West, departing the said southwest right-of-way line, and along the southeast line of the said called 7.90 acre tract of land, a distance of 480.00 feet to a point for the south corner of the said called 1.14 acre tract of land;

THENCE North 45°48'01" West, along the southwest line of the said called 1.14 acre tract of land, a distance of 103.50 feet to a point for the west corner of the said called 1.14 acre tract of land;

THENCE North 45°00'55" East, along the northwest line of the said called 1.14 acre tract of land, a distance of 480.00 feet to the **POINT OF BEGINNING** and containing 49,675 square feet or 1.1404 acres or land, more or less.

Bearings are based on the record bearing of the northwest line of the called 1.14 acre tract of land described in the Warranty Deed to Bobby Wayne Hilbert, recorded in Instrument No. 2014-0010860, Deed Records, Kaufman County, Texas. A survey plat of even survey date herewith accompanies this metes & bounds description.

This document was prepared under 22 TAC §663.21, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.


JOSHUA D. WARGO
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6391
 801 CHERRY STREET,
 UNIT 11 SUITE 1300
 FORT WORTH, TEXAS 76102
 PH. 817-962-2193
 josh.wargo@kimley-horn.com



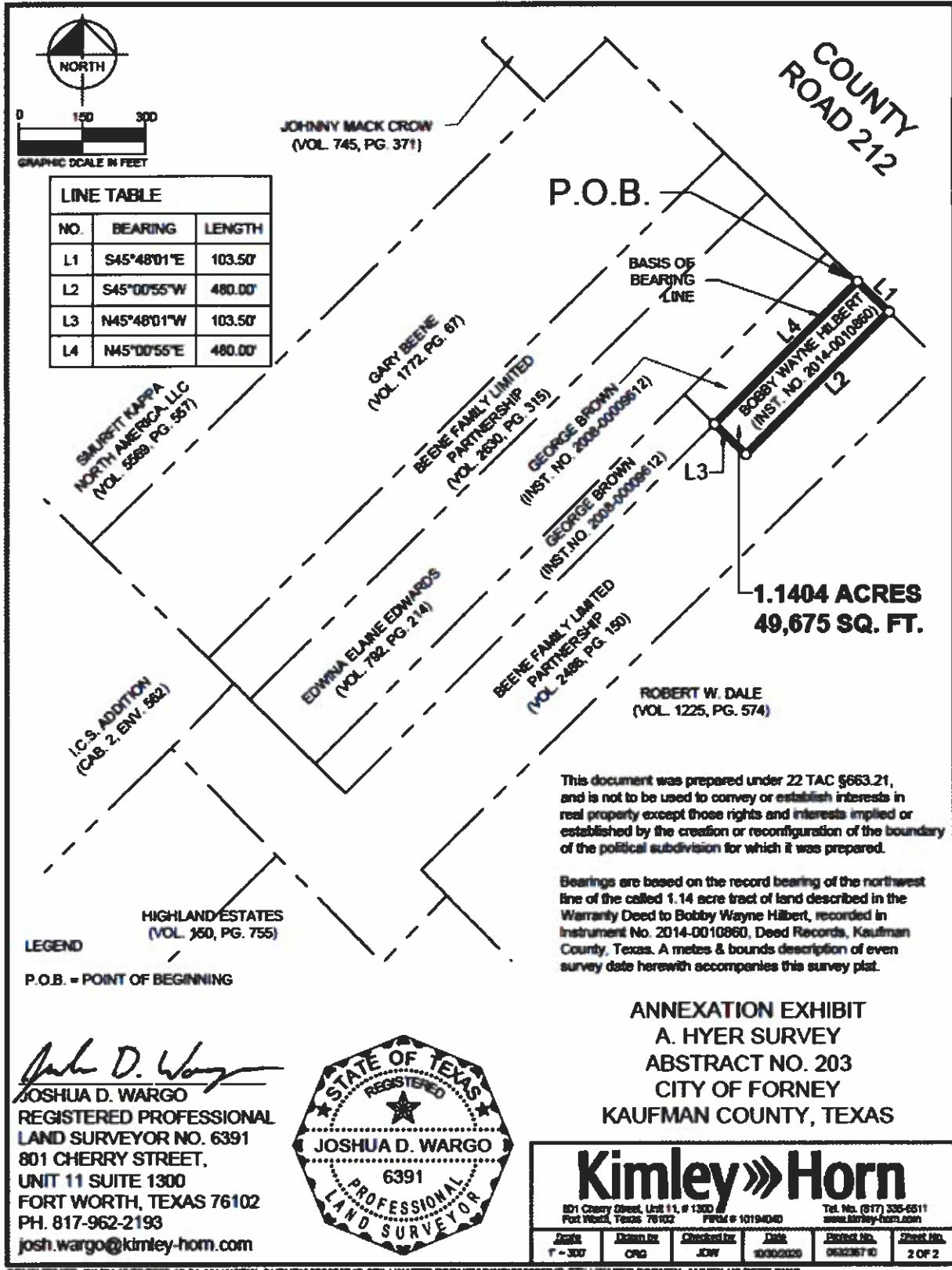
ANNEXATION EXHIBIT
 A. HYER SURVEY
 ABSTRACT NO. 203
 CITY OF FORNEY
 KAUFMAN COUNTY, TEXAS

Kimley»Horn
 801 Cherry Street, Unit 11, # 1300
 Fort Worth, Texas 76102 PFD# 9 10194040 Tel. No. (817) 336-6611
 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Printed by	Sheet No.
N/A	CNG	JOW	10/06/2020	0632287-D	1 OF 2

GENHEIMER, RILEY 10/30/2020 10:51 AM K\FTW_SURVEY\0532357-10-STILLWATER FORNEY\0532357-10-STILLWATER FORNEY_ANNEX-HILBERT.DWG

EXHIBIT A – PROPERTY DESCRIPTION



Joshua D. Wargo
JOSHUA D. WARGO
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6391
 801 CHERRY STREET,
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Bearings are based on the record bearing of the northwest line of the called 1.14 acre tract of land described in the Warranty Deed to Bobby Wayne Hilbert, recorded in Instrument No. 2014-0010860, Deed Records, Kaufman County, Texas. A metes & bounds description of even survey date herewith accompanies this survey plat.

Kimley»Horn

801 Cherry Street, Unit 11, # 1300
 Fort Worth, Texas 76102 P.O. Box 10194040 Tel. No. (817) 335-6511
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Scale 1" = 300'	Drawn by CPG	Checked by JOW	Date 03/30/2020	Project No. 063236740	Sheet No. 2 OF 2
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EXHIBIT B – DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

15 This Development Agreement (this “Agreement”) is executed to be effective as of the day of December, 20 20 (the “Effective Date”), by and between Stillwater Capital (the “Developer”) and the City of Forney, Texas, a municipal corporation and political subdivision of the State of Texas situated in Kaufman County, Texas (the “City”), individually referred to as a “Party” and collectively as the “Parties”.

ARTICLE I
RECITALS

WHEREAS, the City is a home rule municipal corporation of the State of Texas; and

WHEREAS, the Developer is an authorized representative and is under contract for the purchase of the real property located in Kaufman County (the “County”) and described by metes and bounds on Exhibit A and depicted on Exhibit B (the “Property”); and

WHEREAS, the Property is located wholly within the extraterritorial jurisdiction (“ETJ”) of the City and contiguous to the City’s corporate limits, and is not within the ETJ or corporate limits of any other town or city; and

WHEREAS, the Parties intend for the Property to be annexed and developed in the City’s corporate limits; and

WHEREAS, Talty Special Utility District (“Talty SUD”) holds the water certificate of convenience and necessity (“CCN”) over the Property; and

WHEREAS, no entity holds a sewer CCN over the Property; and

WHEREAS, the Parties intend that the City will be the retail provider of sewer service to the Property; and

WHEREAS, the sewer, drainage, and roadway public infrastructure needed to serve the development of the Property as permitted by this Agreement (the “Public Infrastructure”) is not currently available to serve the Parties’ intended development of the Property; and

WHEREAS, the City has determined that full development of the Property in the City’s corporate limits as provided herein will promote local economic development within the City and will stimulate business and commercial activity within the City; and

WHEREAS, such managed growth and voluntary annexation will drive infrastructure investment and job creation, both of which will, in turn, have a multiplier effect that increases both the City’s tax base and utility revenues; and

WHEREAS, the Parties have the authority to enter into this Agreement pursuant to Section 212.172 of the Texas Local Government Code and pursuant to the City’s home rule charter.

EXHIBIT B – DEVELOPMENT AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are acknowledged and agreed by the Parties, the Parties agree as follows:

ARTICLE II DEVELOPMENT REGULATIONS

2.1 **Governing Regulations.** Development and use of the Property shall be governed solely by the following regulations (collectively, the “Governing Regulations”):

(a) the Concept Plan attached as **Exhibit C** as amended from time to time in accordance with this Agreement (the “Concept Plan”), which Concept Plan is considered to be a development plan as provided for in Section 212.172 of the Texas Local Government Code, as well as a plan for development for the Property to which development shall be generally consistent; and

(b) the comprehensive zoning ordinance of the City as it exists on the Effective Date (the “Zoning Ordinance”); and

(c) the subdivision regulations of the City codified as Chapter 10 of the City's Code of Ordinances as such regulations exist on the Effective Date (the “Subdivision Regulations”); and

(d) the development regulations set forth on **Exhibit D** (the “Development Regulations”), which modify the Zoning Ordinance; and

(e) final plats for portions of the Property that are approved, from time to time, by the City in accordance with this Agreement (the “Approved Plats”).

The Governing Regulations are exclusive, and no other ordinances, rules, regulations, standards, policies, orders, guidelines, or other City-adopted or City-enforced requirements of any kind (including but not limited to any moratorium) adopted by the City after the Effective Date apply to the development of the Property.

2.2 **Concept Plan Revisions.** Upon request by the Developer, the Concept Plan may be revised with the approval of the City Council. If the Concept Plan or Development Regulations is revised as provided by this section, the revised Concept Plan and Development Regulations shall be recorded in the deed records of the County and attached to the official copy of this Agreement on file in the City Secretary's office.

2.3 **Conflicts.** In the event of any conflict between this Agreement and any City ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, including any of the Governing Regulations, this Agreement shall control. In the event of any conflict between the Development Regulations and any of the other Governing Regulations, the Development Regulations shall control.

EXHIBIT B – DEVELOPMENT AGREEMENT

ARTICLE III

DEVELOPMENT CHARGES AND REQUIRED DEDICATIONS

3.1 Development Fees. The Property shall be subject only to the generally applicable development fees adopted by the City on the Effective Date of this Agreement, as uniformly charged within the City’s corporate limits, including sewer and roadway impact fees adopted and charged in compliance with Chapter 395 of the Texas Local Government Code.

ARTICLE IV

PUBLIC INFRASTRUCTURE; RETAIL UTILITY SERVICE

4.1 Retail Water and Sewer Service. The City shall be the retail provider of sewer service to the Property. Talty SUD shall be the retail provider of water service, unless and until the City becomes the holder the water CCN at which point the city shall become the retail provider of water service.

4.2 Public Infrastructure Generally. No oversizing of sewer Public Infrastructure to serve land outside the Property shall be required as a condition to any development approval without giving credits or reimbursements of impact fees assessed and collected for the development of the Property and/or other monetary compensation to reimburse for the full cost of such oversizing. No offsite roadway improvements shall be required. If Developer elects to construct offsite roadway improvements City shall provide impact fee credits or reimbursements assessed and collected for the development of the Property.

4.3 Drainage Public Infrastructure. All drainage Public Infrastructure shall be designed and sized by Developer according to the City’s Development Standards to serve the development of the Property and the Subdivision Regulations.

4.4 Right-of-Way Dedication. Right-of-way for County Road 212 adjacent to the Property shall be dedicated in accordance with the City of Forney Thoroughfare Plan in existence as of the Effective Date of this Agreement or as mutually agreed to by the Parties.

4.5 Maintenance. The City agrees to own and maintain all of the Public Infrastructure constructed in connection with the development of the Property except for the water facilities that are to be maintained by Talty SUD.

4.6 Special Districts. The Developer agrees not to pursue the creation of a municipal utility district, fresh water supply district, water control and improvement district, public improvement district or other similar district to finance the cost of the Public Infrastructure.

ARTICLE V

TERM OF AGREEMENT

5.1 Initial Term. The initial term (the “Initial Term”) of this Agreement will commence on the Effective Date and continue for 10 years thereafter.

5.2 Extensions. After the Initial Term, the Agreement may be extended for one five-year period as to all of the Property by mutual written agreement of the City and the Developer.

EXHIBIT B – DEVELOPMENT AGREEMENT

The total duration of the Agreement, including the Initial Term and the extension, shall not exceed 15 years (the Initial Term as extended by any extension, the “Term”).

5.3 Expiration. After the Term, this Agreement will be of no further force and effect, except that termination will not affect any right or obligation arising from approvals previously granted, or any entitlement relating to the Property assigned under Chapter 245 of the Texas Local Government Code.

5.4 Termination or Amendment. Developer may record an instrument terminating this Agreement, without the prior approval or consent of the City, if the Property is zoned in general conformance with the Governing Regulations. This Agreement may be otherwise terminated or amended as to all of the Property or a portion thereof at any time by mutual written agreement of the City and the Developer.

ARTICLE VI ANNEXATION AND ZONING

6.1 Annexation. Concurrently with the execution of this Agreement, Developer submitted a petition to the City seeking the voluntary annexation of the Property into the City’s corporate limits. The annexation petition conditionally consents to the annexation of the Property. The City agrees to follow all legal requirements for annexation and to annex the Property into the city limits of the City on or before June 1, 2021.

6.2 Zoning. The Property shall be developed in accordance with the terms of this Agreement. The City agrees to simultaneously consider zoning the Property as a single planned development district with zoning regulations consistent with Article II and all of the Governing Regulations that apply to the Property under this Agreement. No land study shall be required in connection with a zoning application for a planned development district.

ARTICLE VII EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default. 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 the alleged failure (such reasonable time to be determined based on the nature of the alleged failure, but in no event less than 30 days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured.

7.2 REMEDIES. IF A PARTY IS IN DEFAULT, 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 JUDGMENT ACT, SPECIFIC PERFORMANCE, MANDAMUS, AND

EXHIBIT B – DEVELOPMENT AGREEMENT

INJUNCTIVE RELIEF. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL:

- (a) entitle the aggrieved Party to terminate this Agreement; or
- (b) entitle the Parties to suspend performance under this Agreement; or
- (c) adversely affect or impair the current or future obligations of the City to provide municipal services to the Property; or
- (d) entitle the aggrieved Party to seek or recover monetary damages of any kind; or
- (e) limit the Term.

7.3 **Governmental Powers; Waivers of Immunity.** To the extent permitted by law, the City waives its governmental immunity from suit and immunity from liability as to any action brought by a Party to pursue the remedies available under this Agreement, but only to the extent necessary to pursue such remedies. The City agrees that this Agreement constitutes a “contract subject to this subchapter” for purposes of Texas Local Government Code Chapter 271, Subchapter I. Nothing in this Agreement is intended to delegate or impair the performance by the City of its governmental functions, and the City waives any claim or defense that any provision of this Agreement is unenforceable on the grounds that it constitutes an impermissible delegation or impairment of the City’s performance of its governmental functions.

ARTICLE VIII **ASSIGNMENT AND ENCUMBRANCE**

8.1 **Assignment.** The Developer has the right to assign this Agreement with the consent of the City, which consent shall not unreasonably be withheld, in whole or in part, and including any obligation, right, title, or interest of the Developer under this Agreement, to any person or entity (an “Assignee”) that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with the Developer. Each assignment shall be in writing executed by the Developer and the Assignee and shall obligate the Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to the City within 15 days after execution. From and after such assignment, the City agrees to look solely to the Assignee for the performance of all obligations assigned to the Assignee and agrees that Developer shall be released from subsequently performing the assigned obligations and from any liability that results from the Assignee’s failure to perform the assigned obligations; provided, however, if a copy of the assignment is not received by the City within 15 days after execution, the Developer shall not be released until the City receives such assignment. No assignment by the Developer shall release the Developer from any liability that resulted from an act or omission by the Developer that occurred prior to the effective date of the assignment unless the City approves the release in writing. Each Assignee shall be considered to be both a “Party” to this Agreement and the “Developer” for the purposes of the obligation, right, title, or interest assigned to the Assignee. The City shall not assign this Agreement.

EXHIBIT B – DEVELOPMENT AGREEMENT

8.2 Encumbrance by the Developer and Assignees. The Developer and Assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of their respective lenders without the consent of, but with prompt written notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including notice (hereinafter defined) information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement and shall be given a reasonable time to do so in addition to the cure periods otherwise provided to the defaulting Party by this Agreement; and the City agrees to accept a cure offered by the lender as if offered by the defaulting Party. A lender is not a Party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial. Any purchaser from or successor owner through a lender of any portion of the Property shall be bound by this Agreement, but shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured.

8.3 Encumbrance by City. The City shall not collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of its rights, title, or interest under this Agreement.

ARTICLE IX

RECORDATION, RELEASES, AND ESTOPPEL CERTIFICATES

9.1 Binding Obligations. Pursuant to the requirements of Section 212.172(f) of the Texas Local Government Code, this Agreement and all amendments hereto (including amendments to the Concept Plan) shall be recorded in the deed records of the County. In addition, all assignments to this Agreement shall be recorded in the deed records of the County. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns permitted by this Agreement and upon the Property; however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any End-Buyer except for land use and development regulations that apply to specific lots. For purposes of this Agreement, the Parties agree: (a) that the term "End-Buyer" means any owner, developer, tenant, user, or occupant; (b) that the term "fully developed and improved lot" means any lot, regardless of proposed use, for which a final plat has been approved by the City and recorded in the deed records; and (c) that the term "land use and development regulations that apply to specific lots" means all of the Governing Regulations.

9.2 Releases. Without limiting Developer's right to terminate pursuant to Section 5.4, from time to time upon written request of the Developer, the City Manager shall execute, in recordable form, a release of this Agreement, if the requirements of this Agreement have been met, subject to the continued application of the Development Regulations.

EXHIBIT B – DEVELOPMENT AGREEMENT

9.3 Estoppel Certificates. From time to time upon written request of the Developer, the City Manager will execute a written estoppel certificate identifying any obligations of the Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; and stating, to the extent true, that to the best knowledge and belief of the City, the Developer is in compliance with its duties and obligations under this Agreement.

ARTICLE X ADDITIONAL PROVISIONS

10.1 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council, and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

10.2 Notices. All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) shall be in writing, shall be signed by or on behalf of the Party giving the notice, and shall be effective as follows: (a) on or after the 10th business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by FAX or E-mail; (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the notice is addressed); or (c) otherwise on the day actually received by the person to whom the notice is addressed, including, but not limited to, delivery in person and delivery by regular mail or by E-mail. If the notice information for a Party changes, that Party shall provide the updated notice information to the other Party in accordance with the notice requirements of this section. Notices given pursuant to this section shall be addressed as follows:

To the City:

Attn: Anthony Carson
City Manager of Forney, Texas
P.O. Box 826
Forney, Texas 75126
E-mail: acarson@forneytx.gov
FAX: 972.564.7349

With a copy to:

Attn: Jon Thatcher
City Attorney of Forney, Texas
P.O. Box 826
Forney, Texas 75126
E-mail: jthatcher@forneytx.gov
FAX: 972.564.7349

EXHIBIT B – DEVELOPMENT AGREEMENT

To the Developer: Attn: Stephen Holley
Stillwater Capital
4145 Travis Street
Suite 300
Dallas, Texas 75204
Stephen.holley@stillwatercap.com

With a copy to: Attn: William S. Dahlstrom
Jackson Walker, LLP
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
wdahlstrom@jw.com

10.3 RESERVATION OF RIGHTS. THIS AGREEMENT CONSTITUTES A “PERMIT” WITHIN THE MEANING OF CHAPTER 245, TEXAS LOCAL GOVERNMENT CODE. EXCEPT AS PROVIDED IN THIS SECTION, THE DEVELOPER DOES NOT, BY ENTERING INTO THIS AGREEMENT, WAIVE (AND THE DEVELOPER EXPRESSLY RESERVES) ANY RIGHT THAT THE DEVELOPER MAY NOW OR HEREAFTER HAVE WITH RESPECT TO ANY CLAIM: (A) OF “VESTED” OR “PROTECTED” DEVELOPMENT OR OTHER PROPERTY RIGHTS ARISING FROM CHAPTERS 43 OR 245, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, OR OTHERWISE ARISING FROM COMMON LAW OR OTHER STATE OR FEDERAL LAWS; (B) THAT THE APPLICATION OF IMPACT FEES TO THE DEVELOPMENT OF THE PROPERTY VIOLATES CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, OR ANY OTHER LOCAL, STATE, OR FEDERAL LAW; OR (C) THAT AN ACTION BY THE CITY CONSTITUTES A “TAKING” OR INVERSE CONDEMNATION OF ALL OR ANY PORTION OF THE PROPERTY OR AN ILLEGAL EXACTION.

10.4 Interpretation. The Parties acknowledge that each of them has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for or against any Party, regardless of which Party originally drafted the provision.

10.5 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. The Developer represents and warrants that this Agreement has been approved by appropriate action of the Developer, and that the individual executing this Agreement on behalf of the Developer has been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions and that, with respect to the Property, the performance by the Parties under this Agreement is authorized by Section 212.172 of the Texas Local Government Code.

EXHIBIT B – DEVELOPMENT AGREEMENT

10.6 Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. Further, this Agreement shall supersede any other development or similar agreements related to the Property. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties. Without limiting the generality of the foregoing, (a) if it is determined that, as of the Effective Date, the Developer does not own any portion of the Property, this Agreement shall remain in full force and effect with respect to all of the Property that the Developer does then own, and (b) if it is determined, as of the Effective Date, that any portion of the Property is not within the City’s ETJ, this Agreement shall remain in full force and effect with respect to all of the Property that is then within the City’s ETJ. If at any time after the Effective Date it is determined that any portion of the Property is no longer within the City’s ETJ, this Agreement shall remain in full force and effect with respect to all of the Property that remains within the City’s ETJ.

10.7 Applicable Law; Venue. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Kaufman County, Texas. Venue for any action to enforce or construe this Agreement shall be Kaufman County, Texas.

10.8 Non Waiver. Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

10.9 No Third Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

10.10 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three business days after a Party has actual knowledge of the occurrence of a force majeure event, the Party claiming the right to temporarily suspend its performance, shall give notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term “force majeure”, as used

EXHIBIT B – DEVELOPMENT AGREEMENT

herein, shall include without limitation of the generality thereof, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States or the State of Texas, or any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, and any other incapacities of any party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such incapacity, which such party could not have avoided by the exercise of due diligence and care and which the party is proceeding promptly to cure.

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

10.12 Further Documents. Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties.

10.13 Exhibits. The following Exhibits are attached to this Agreement and are incorporated herein for all purposes:

Exhibit A	Metes and Bounds Description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Concept Plan
Exhibit D	Development Regulations

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EXHIBIT B – DEVELOPMENT AGREEMENT

Executed by the Developer and the City to be effective on the Effective Date.

ATTEST:

CITY OF FORNEY

Name: Dorothy Brooks
Title: City Secretary

Name: Mary Penn
Title: Mayor
Date:

APPROVED AS TO FORM AND LEGALITY:

Name: [Signature]
City Attorney

STATE OF TEXAS §
COUNTY OF Kaufman §

This instrument was acknowledged before me on January 7, 2021 by Mary Penn, Mayor of the City of Forney, Texas on behalf of said city.

Megan Killingsworth
Notary Public, State of Texas

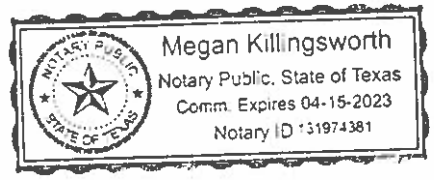


EXHIBIT B – DEVELOPMENT AGREEMENT

DEVELOPER:

By: _____
Name: Aaron Sherman
Title: Manager

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

This instrument was acknowledged before me on January 6, 2021 by Aaron Sherman in his capacity as Manager for Stillwater Capital Investments, LLC

Bradley J. Kyles
Notary Public, State of Texas

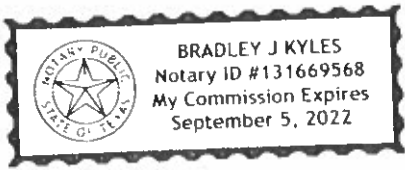


EXHIBIT B – DEVELOPMENT AGREEMENT

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE PROPERTY

ZONING METES & BOUNDS DESCRIPTION

BEING a 47.1226 acre tract of land situated in the A. Hyer Survey, Abstract No. 203, Kaufman County, Texas, and being all of a called 15.3339 acre tract of land described in the Warranty Deed to Gary Beene, recorded in Volume 1772, Page 67, Deed Records, Kaufman County, Texas, and being all of a called 5.531 acre tract of land described in the Warranty Deed to the Beene Family Limited Partnership, recorded in Volume 2630, Page 315, said Deed Records, and being a portion of a called 14.48 acre tract of land described in the Warranty Deed to the Beene Family Limited Partnership, recorded in Volume 2486, Page 150, said Deed Records, and being all of a called 7.90 acre tract of land described in the Warranty Deed to Edwina Elaine Edwards, recorded in Volume 792, Page 214, said Deed Records, and being all of a called 1.14 acre tract of land described in the Warranty Deed to Bobby Wayne Hilbert, recorded in Instrument No. 2014-0010860, Official Public Records, Kaufman County, Texas, and being all of Tract I and Tract II described in the Warranty Deed to George Brown, recorded in Instrument No. 2008-00009612, said Official Public Records and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with cap stamped "BWLS" found for the north corner of the said called 5.531 acre tract of land, and being a point in the southwest right-of-way line of County Road No. 212 (a variable width right-of-way);

THENCE along the said southwest right-of-way line the following calls:

South 45°57'45" East, a distance of 140.47 feet to a 3/8-inch iron rod found for the east corner of the said called 5.531 acre tract of land;

South 46°06'23" East, a distance of 200.22 feet to a 1/2-inch iron rod found for the east corner of the said called 7.90 acre tract of land;

South 45°36'20" East, a distance of 100.03 feet to a 1/2-inch iron rod found for the east corner of said Tract I;

South 45°23'31" East, a distance of 103.31 feet to a 1/2-inch iron rod found for the east corner of the said 1.14 acre tract of land;

South 45°23'31" East, a distance of 171.67 feet to a 5/8-inch iron rod with "KHA" cap set for corner;

THENCE South 45°24'58" West, departing the said southwest right-of-way line, and along the southeasterly line of the said called 14.48 acre tract of land, a distance of 1722.65 feet to an iron rod with "KHA" cap set for an interior corner of the said called 14.48 acre tract of land;

THENCE South 45°19'10" East, continuing along the said southeasterly line, a distance of 78.21 feet to a 1/2-inch iron rod found for the southernmost east corner of the said called 14.48 acre tract of land;

CONTINUED ON SHEET 2

ZONING EXHIBIT
A. HYER SURVEY
ABSTRACT NO. 203
CITY OF FORNEY
KAUFMAN COUNTY, TEXAS

Kimley»Horn

801 Cherry Street, LMB 111, # 1000
Fort Worth, Texas 76102 Phone # 817-640-4040 Tel. No. (817) 330-6811
www.kimley-horn.com

Scale N/A	Drawn by CRG	Checked by JCH	Date 12/13/2023	Project No. 0632267-05	Sheet No. 1 OF 4
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EXHIBIT B – DEVELOPMENT AGREEMENT

ZONING METES & BOUNDS DESCRIPTION (CONTINUED)

THENCE South 44°31'21" West, continuing along the said southeasterly line, a distance of 222.26 feet to a 5/8-inch iron rod with "KHA" cap set for the southernmost corner of the said called 14.48 acre tract of land;

THENCE North 44°37'09" West, along the southwest line of the said called 14.48 acre tract of land, a distance of 714.37 feet to a 1/2-inch iron rod found for the westernmost corner of the said called 14.48 acre tract of land;

THENCE North 43°57'40" East, along the northwest line of the said called 14.48 acre tract of land, a distance of 213.79 feet to a 1/2-inch iron rod found for the westernmost north corner of the said called 14.48 acre tract of land, and being on the southwest line of the aforementioned called 5.531 acre tract of land;

THENCE North 45°00'31" West, along the said southwest line, a distance of 465.12 feet to a point for corner on the northwest line of the said called 15.3339 acre tract of land;

THENCE North 45°22'33" East, along the said northwest line, a distance of 1710.32 feet to a 5/8-inch iron rod with "KHA" cap set for corner, being on the aforementioned southwest right-of-way line, from which a 1-inch iron pipe found bears North 45°35'58" West, a distance of 1.53 feet;

THENCE South 45°57'45" East, along the said southwest right-of-way line, a distance of 389.01 feet to the **POINT OF BEGINNING** and containing 2,052,659 square feet or 47.1226 acres of land, more or less.

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

This document was prepared under 22 TAC §663.21, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

Joshua D. Wargo
JOSHUA D. WARGO
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6391
 801 CHERRY STREET
 UNIT 11 SUITE 1300
 FORT WORTH, TEXAS 76102
 PH. 817-335-6511
 josh.wargo@kimley-horn.com



ZONING EXHIBIT
 A. HYER SURVEY
 ABSTRACT NO. 203
 CITY OF FORNEY
 KAUFMAN COUNTY, TEXAS

Kimley»Horn
 801 Cherry Street, Unit 11, # 1300
 Fort Worth, Texas 76102
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Scale N/A	Drawn by CRO	Checked by JOW	Date 12/10/2022	Project No. 063067-02	Sheet No. 2 OF 4
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EXHIBIT B – DEVELOPMENT AGREEMENT

EXHIBIT B

DEPICTION OF THE PROPERTY

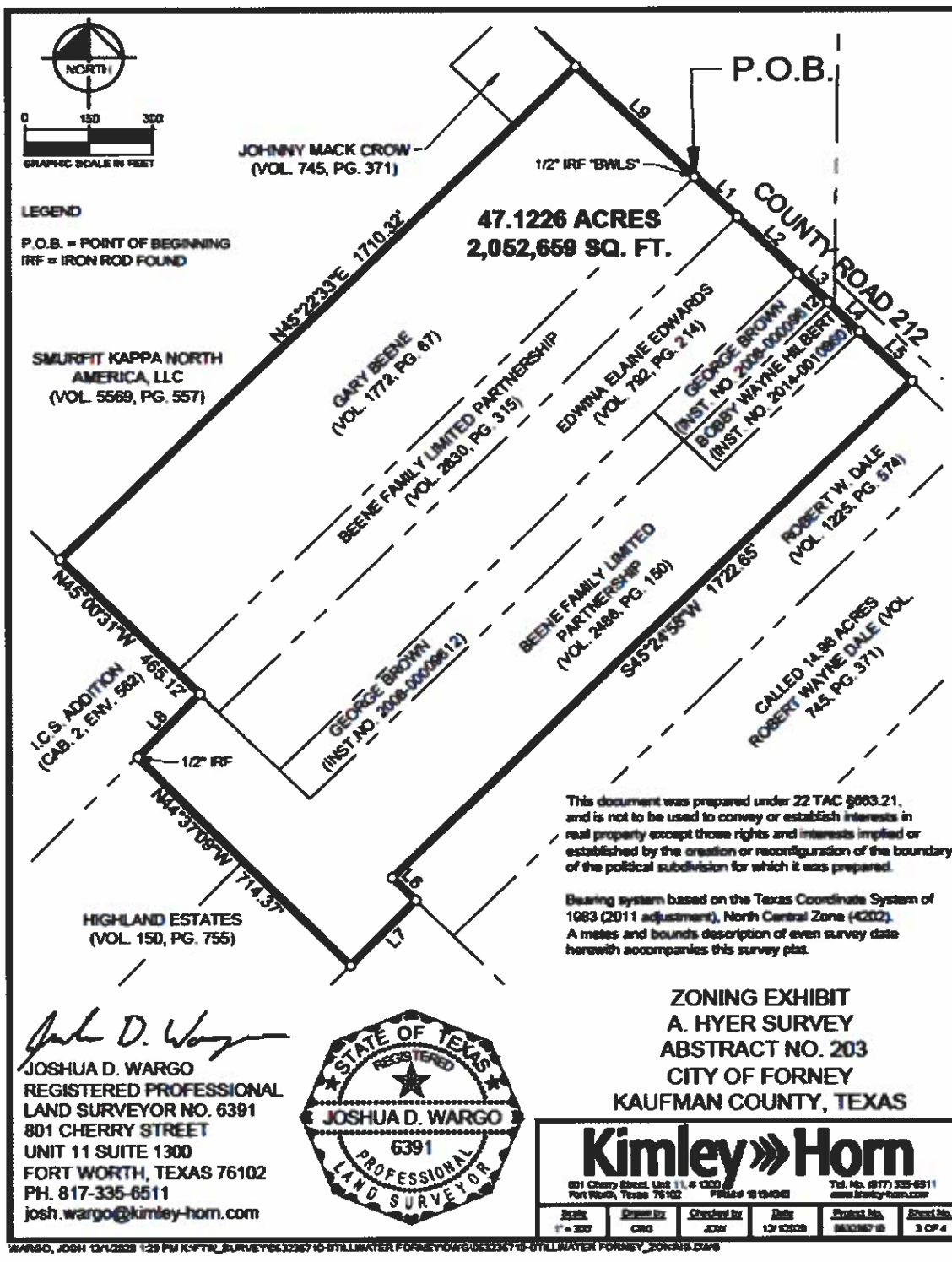


EXHIBIT B – DEVELOPMENT AGREEMENT

LINE TABLE		
NO.	BEARING	LENGTH
L1	S45°57'45"E	140.47'
L2	S48°08'23"E	200.22'
L3	S45°38'20"E	100.03'
L4	S45°23'31"E	103.31'
L5	S45°23'31"E	171.67'
L6	S45°10'10"E	78.21'
L7	S44°31'21"W	222.28'
L8	N43°57'40"E	213.79'
L9	S45°57'45"E	388.01'

ZONING EXHIBIT
A. HYER SURVEY
ABSTRACT NO. 203
CITY OF FORNEY
KAUFMAN COUNTY, TEXAS

Kimley»Horn	
801 Cherry Street, Unit 11, # 1000 Fort Worth, Texas 76102 Phone: (817) 338-6511 www.kimley-horn.com	
Scale 1" = 300'	Drawn by CRD
Checked by JDR	Date 12/12/20
Project No. 0632367-02	Sheet No. 4 OF 4

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EXHIBIT B – DEVELOPMENT AGREEMENT

EXHIBIT C

CONCEPT PLAN

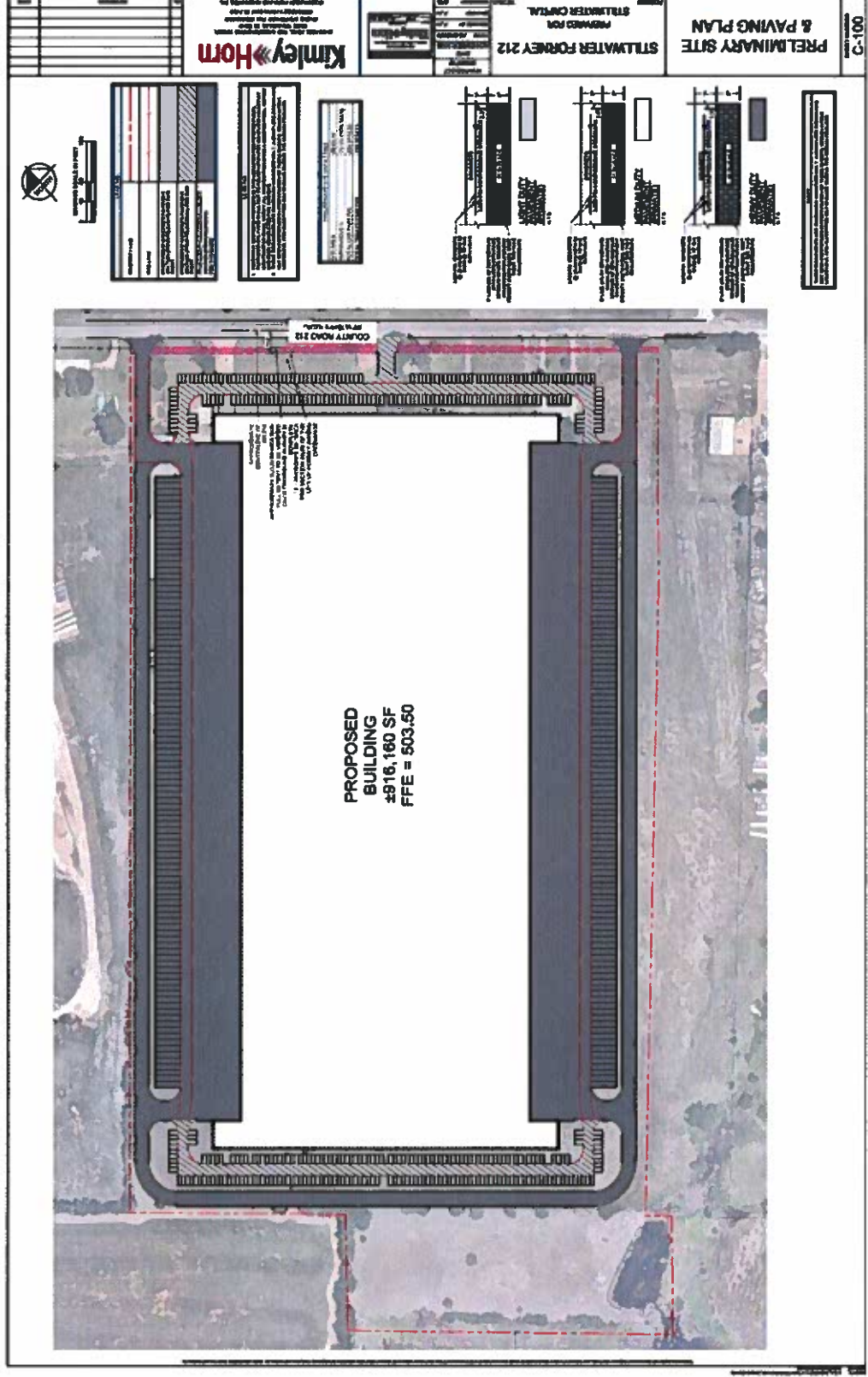


EXHIBIT B – DEVELOPMENT AGREEMENT

EXHIBIT D

DEVELOPMENT REGULATION

- I. **Statement of Purpose:** The purpose of this Planned Development District is to permit the development of a warehouse and distribution center with a base zoning of Light Industrial (LI) District in accordance with these Planned Development Conditions, the Site Plan attached as Exhibit C, and the Comprehensive Zoning Ordinance, Ordinance No. 1085, as amended through the date of the adoption of this Ordinance.
- II. **Statement of Effect:** This Planned Development shall not affect any regulations found in the Comprehensive Zoning Ordinance, Ordinance No. 1085, as amended prior to adoption of this ordinance, except as specifically provided herein.
- III. **General Regulations:** All regulations of the Light Industrial (LI) District set forth in Section 33 of the Comprehensive Zoning Ordinance, as amended prior to adoption of this Ordinance, are included by reference and shall apply, except as otherwise specified by this Ordinance. No overlay zoning district shall apply to this planned development overlay district.
- IV. **Distribution Center Definition:** The term distribution center, as used in this Ordinance, is defined as a building or facility used for the storage and distribution of items/products, which may include (a) receiving, storing, assembling, shipping, distributing, preparing, and selling items/products and serving as a pick-up/drop-off location for items/products; (b) the parking, storage, incidental maintenance, fueling and use (including driving into and through the building for loading and unloading and parking inside the building) of automobiles, trucks, machinery and trailers, including outdoor loading and unloading; (c) printing; (d) making products on demand; (e) warehouse and office use; (f) using, handling or storing materials in the ordinary course of business, including any packaged merchandise to be sold, handled, and/or held for shipment to customers, maintenance of trucks and machinery, and fuel (including liquefied hydrogen or other alternative fuels) or batteries for any trucks, generators or other machinery or the equipment described in this definition; (g) installing and operating rooftop equipment such as satellite dishes, cellular antenna, and renewable energy systems, including solar energy systems and hydrogen fuel cell tanks and related equipment; (h) installing and operating battery storage systems, electrical generators, and fuel tanks; and (i) ancillary and related uses for any of the foregoing, all on a twenty-four-hour, seven-days-per-week, fifty-two-weeks-per-year basis. A distribution center may receive sortable and non-sortable product from vendors and others. Products may be stored in different storage types (mainly traditional pallet racking systems and shelving), providing the capability to fulfill customer orders and sort them to downstream transportation connections. Cages and pallets coming from inbound operations may be sent towards drop zones with Powered Industrial Trucks (PIT) to perform the stowing process onto the storage system (e.g. VNA Racking, shelving, etc.).

EXHIBIT B – DEVELOPMENT AGREEMENT

V. **Concept Plan:** Development shall be in general conformance with the Concept Plan attached hereto as Exhibit “C”; however, in the event of conflict between the Concept Plan and the written conditions of this Ordinance, the written conditions shall apply.

VI. **Specific Regulations:**

A. **Permitted Uses:** Except as provided herein, no uses shall be permitted except for the uses listed under the Light Industrial (LI) District in Section 37 of the Comprehensive Zoning Ordinance. The following additional uses are also permitted by right:

- a. Distribution Center (as defined herein)
- b. Manufacturing, General;
- c. Outside Storage, Including Truck and Tractor Trailer Storage;
- d. Accessory use; and
- e. Wholesale Distribution Center.

Any manufacturing or storage of hazardous materials as defined by the International Fire Code and International Building Code will require a Conditional Use Permit to be an allowable use.

B. **Height Regulations:** For purposes of this District, a Conditional Use Permit (CUP) will only be required for a structure above sixty-five feet (65’) in height.

C. **Area Regulations:**

1. Section 33.4.A.4 regarding maximum lot depth does not apply. Maximum lot depth may be as shown on the Concept Plan.
2. **Size of Yards:**
 - a. Minimum front yard: 10 feet
 - b. Minimum side and rear yard: 5 feet
3. **Maximum lot coverage: 90%**
4. **Parking Requirements:**
 - a. For wholesale distribution, warehouse, and distribution center uses one (1) space is required for each two (2) employees on duty at peak shifts and one (1) space for each four thousand (4,000) square feet of total floor area, whichever is greater.

EXHIBIT B – DEVELOPMENT AGREEMENT

- b. Each standard surface parking space shall be the following minimum size: nine feet (9') by eighteen feet (20').
- c. Trucks shall not be allowed to park or cause “stacking” to occur on a public roadway, including CR 212.

5. Minimum Exterior Construction Standards:

- a. 33.4(F) and 42.2(C) of the Comprehensive Zoning Ordinance do not apply in this District.
- b. All structures shall consist of one hundred percent (100%) non-combustible materials.
- c. Cementitious fiber board siding shall qualify as masonry construction. Building design and materials shall generally conform to the building elevations included in the Site Plan attached as Exhibit C, provided that the materials shown on the building elevations attached as part of Exhibit C may vary a maximum of five percent.
- d. The elevations attached as Exhibit C shall satisfy the requirement for building facade plans (elevations) in Section 33.5(f) of the Comprehensive Zoning Ordinance.

D. Special Requirements

- 1. Driveway Spacing/Width: Section 33.5 does not apply. Driveway spacing shall be as generally shown on the Concept Plan. Maximum driveway width is 100 feet per driveway.
- 2. Open Storage:
 - a. Except as provided herein, Section 33.5(E) does not apply in this District.
 - b. Open storage is limited to a maximum of forty percent (40%) of the total lot area.
- 3. Screening:
 - a. A chain link fence with approved landscaping is permitted to be used as a screening fence around the perimeter of the Property. Barbed wire, razor wire, and other secure fencing may be used in conjunction with a chain link fence.
- 4. Bicycle Parking: Bicycle parking shall not be required to be provided on the Property.

EXHIBIT B – DEVELOPMENT AGREEMENT

5. Landscaping:

- a. For purposes of this District, “permanent landscaping” shall include earth, grass, ground covers and shrubs and trees.
- b. A minimum of fifty percent (50%) of the total trees required for the property shall be large shade trees.
- c. Landscape Areas Within Parking Lots:
 - i. In addition to the other requirements listed herein, surface parking lots shall contain the following:

<u>Parking Spaces</u>	<u>Trees</u>	<u>Location</u>
< 11 spaces	1 Tree	Interior Parkway
11-100 spaces	1 Tree/20 spaces	Within and/or around the perimeter of the parking lot; at least 25% within the interior of the parking lot
> 100 spaces	1 Tree/15 spaces	Within and/or around the perimeter of the parking lot; at least 25% within the interior of the parking lot

- d. Trees may be of any type in the Tree List Trees; however, all trees must be a minimum of four (4) inch caliper at time of planting.
- e. Trees may be evenly spaced throughout the parking lot, or clustered in landscaped island areas, along major drives and fire lanes, or otherwise distributed within the parking area.
- f. Landscaping for the parking areas dedicated for trucks may be relocated to other areas of the property.

6. Signage: For purposes of this District, the following signage regulations apply:

- a. Except as otherwise permitted, the maximum sign area of a monument sign or freestanding monument sign may not exceed two hundred (200) square feet. There is no percentage limitation on the text area of a monument sign devoted to identifying the name of a tenant or building.
- b. The maximum height of a monument sign may not exceed ten (10) feet.

EXHIBIT B – DEVELOPMENT AGREEMENT

- c. The maximum wall coverage for a wall sign placed on a rear or side façade is two hundred and twenty-five (225) square feet for each sign.
 - d. The maximum wall coverage for a wall sign placed on the front façade of a building is two hundred and twenty (220) square feet for each sign.
 - e. Signage shall be permitted in accordance with the Site Plan attached Exhibit D.
 - f. Wall Signs may project up to 18 inches from the surface of a wall.
 - g. Wall signs are limited to two signs on the front facade of the building, with one additional sign on each side facade of the building.
 - h. A maximum of three monument signs may be located within this planned development overlay district.
 - i. All other signage shall be in accordance with the City's general sign ordinance.
 - j. Flag pole height shall not be limited.
7. Exterior Light Poles: Exterior light poles may be a maximum of 40 feet in height.
8. Minor Modification Procedure:
- a. The City Manager, or his/her designee, may approve minor modifications to the Concept Plan and to the Site Plan.
 - b. A minor modification to a plan does not decrease setbacks shown on the plan, does not decrease parking, and does not permit a use that would not otherwise be permitted under the current zoning.
 - c. The decision of the City Manager, or his/her designee, may be appealed to the Planning and Zoning Commission.