

Front Street / Nehemiah

Location: Front Street and Oak Street (various properties in the downtown area, west of Center St)

Property Owner: The Nehemiah Company
835 E Lamar Blvd #175
Arlington TX 76011

About the Project

The Nehemiah, LLC is planning to redevelop an area of downtown Arlington located north of Front Street and east of West Street through construction of a mixed-use development that would include a minimum of 150 units of multifamily housing, a minimum of 14,500 square feet of commercial space to include office, retail, restaurant, and personal services, as well as a minimum 320 space parking garage of which at least 160 spaces would be dedicated for public parking. The 380 Agreement provides the Developer with funds to offset the costs of acquiring, completing environmental remediation, and demolishing structures located at 211 W. Front Street, 217 W. Front Street, 204 N. Oak Street, 207 N. Oak Street, and 209 N. Oak Street ("Property"). The Agreement obligates the Developer to complete the environmental remediation and demolition no later than 12 months after closing on the Property or 18 months after the effective date of the Agreement, whichever occurs first. The Developer is also obligated to submit final plans and scope of the mixed-use development to the City for approval. The grant provides for \$1,175,000 for the acquisition costs and up to \$430,000 for appraisals, surveys, and demolition costs. If the Developer does not commence construction of the mixed-use development within a certain amount of time after closing then the Developer is obligated to give the Property, at no cost, to the City.

Goals of the Project

Assemble properties to be redeveloped into mixed use development in downtown.

Current Status

Owner is in the process of acquiring properties.

Benefit to City

Redevelop an area of downtown that is currently underutilized, which may spur additional redevelopment in other key areas of downtown. This project would significantly increase property tax and sales tax revenues, provide additional parking, provide housing, and create more capacity for a walkable downtown live/work/play area.

Year Approved by Council	2021
Base Year	n/a
Beginning Year	2024
Ending Year	2028
Duration	5 years
Base Year Value	n/a
Property Tax Account Number(s)	00057983 211 W. Front Street 00057991 217 W. Front Street 00058793 204 N. Oak Street 00057932 207 N. Oak Street 00057940 209 N. Oak Street
Total Incentives Allowed	\$ 1,605,000
Total Estimated Investment by Company*	\$ 2,000,000
Total Funds Distributed to Company To Date	\$ 1,175,000

Criteria Evaluated Complete a Phase 1 and Phase 2 environmental site assessment for the properties and comply with reasonable recommendations, and close title on each parcel, and complete asbestos remediation and demolition and/or removal of the existing structures located at the addresses within 12 months after closing or 18 months from the effective date of the agreement

Submit to City the plans for development on the premises, and City tracts if applicable, and any applications for additional incentives for the development within 24 months after closing, and commence construction within 36 months after closing

Pay the ad valorem taxes for the properties on time, and render any business personal property associated with the properties, if applicable

Do not employ undocumented workers

Incentives Allowed City grants \$1,175,000 for acquisition costs, paid 60 days prior to closing date
City grants \$430,000 for appraisals, surveying, and other expenses incurred upon acquiring the properties or conducting demolition

Should the development require inclusion of all or a portion of the City tracts in the project area, then the City agrees to negotiate in good faith the transfer of such property to the developer for its timely incorporation into the development

Staff Report



Chapter 380 Program Agreement for Economic Development Incentives–Front Street Redevelopment	
City Council Meeting Date: 03-08-2022	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing execution of a Chapter 380 Program Agreement for Economic Development Incentives by and between The Nehemiah, LLC and the City of Arlington, Texas relative to the construction of a mixed-use development project

PRIOR BOARD OR COUNCIL ACTION

None.

ANALYSIS

The Nehemiah, LLC (“Developer”) is looking to redevelop an area of downtown Arlington located north of Front Street and east of West Street through construction of a mixed-use development. The mixed-use development would include a minimum of 150 units of multi-family housing, a minimum of 14,500 square feet of commercial space to include office, retail, restaurant, and personal services, as well as a minimum 320 space parking garage of which at least 160 spaces would be dedicated for public parking.

The proposed 380 Program Agreement (“Agreement”) provides the Developer with funds to offset the costs of acquiring, completing environmental remediation, and demolishing structures located at 211 W. Front Street, 217 W. Front Street, 217 W. Front Street, 204 N. Oak Street, 207 N. Oak Street, and 209 N. Oak Street (“Property”). The Agreement obligates the Developer to complete the environmental remediation and demolition no later than 12 months after closing on the Property or 18 months after the effective date of the Agreement, whichever occurs first. The Developer is also obligated to submit final plans and scope of the mixed-use development to the City for approval. The grant provides for \$1,175,000 for the acquisition costs and up to \$430,000 for appraisals, surveys, and demolition costs. If the Developer does not commence construction of the mixed-use development within 36 months after closing then the Developer is obligated to give the Property, at no cost, to the City.

FINANCIAL IMPACT

The Innovative Venture Capital Fund (Account No. 910103-61002) will be used to provide funding for the \$1,605,000 grant.

ADDITIONAL INFORMATION

Attached:	Resolution with agreement attached.
Under Separate Cover:	None
Available in the City Secretary’s Office:	None

STAFF CONTACT(S)

Trey Yelverton
City Manager
817-459-6101
Trey.Yelverton@arlingtontx.gov

Molly Shortall
Assistant City Attorney
817-459-6878
Molly.Shortall@arlingtontx.gov

Resolution No. _____

A resolution authorizing the execution of a Chapter 380 Program Agreement for Economic Development Incentives by and between The Nehemiah, LLC and the City of Arlington, Texas relative to the construction of a mixed-use development project

WHEREAS, The Nehemiah, LLC (hereinafter referred to as “DEVELOPER”) plans to acquire certain property in downtown Arlington, demolish and/or remove the existing structures, and construct a mixed-use project on such site; and

WHEREAS, CITY has found that providing a program consisting of a grant of funds to DEVELOPER in exchange for DEVELOPER’S completion of the project proposed by DEVELOPER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as “PROGRAM”); and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and,

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute a Chapter 380 Program Agreement for Economic Development Incentives with DEVELOPER to

provide certain economic incentives associated with the construction of a mixed-use development project in Arlington, Texas.

III.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

IV.

A substantial copy of the Chapter 380 Program Agreement for Economic Development Incentives is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the _____ day of _____, 2022, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

JIM R. ROSS, Mayor

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY

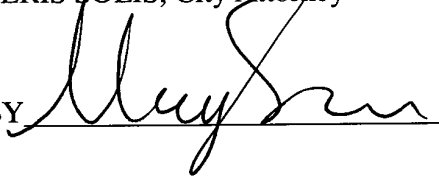


Exhibit "A"

THE STATE OF TEXAS § **CHAPTER 380 PROGRAM AGREEMENT**
 § **FOR ECONOMIC DEVELOPMENT**
COUNTY OF TARRANT § **INCENTIVES**

This AGREEMENT (the "AGREEMENT") is executed on _____, 2022, (hereafter referred to as "Effective Date") by and between the **CITY OF ARLINGTON**, a municipal corporation of Tarrant County, Texas, (hereinafter called "CITY"), and **THE NEHEMIAH, LLC.**, a Texas limited liability corporation, (hereinafter called "DEVELOPER"). CITY and DEVELOPER may be referred to jointly herein as the "Parties" and individually as a "Party."

W I T N E S S E T H:

WHEREAS, DEVELOPER is in active negotiations to control certain PREMISES defined below in Downtown Arlington, Texas, which are currently underdeveloped; and

WHEREAS, the PREMISES are located within Tax Increment Reinvestment Zone Number One ("TIRZ 1"); and

WHEREAS, DEVELOPER desires to demolish and/or remove the existing structures and construct a mixed-use project on the PREMISES; and

WHEREAS, CITY has found that providing a program consisting of a grant of funds to DEVELOPER in exchange for DEVELOPER's completion of the project proposed by DEVELOPER will promote local economic development and stimulate business and commercial activity and create jobs within the CITY (hereafter referred to as "PROGRAM"); and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; NOW THEREFORE,

The CITY and DEVELOPER, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

Section 1. Definitions.

1.1 PREMISES means the property located at the following street addresses all located in Arlington, Texas, 76011 more fully described by metes and bounds in **Exhibit "A"**.

1. 211 W Front Street
2. 217 W Front Street
3. 204 N Oak Street
4. 207 N Oak Street
5. 209 N Oak Street

1.2 DEMOLITION means the demolition and/or removal of all existing structures on the land described in subsection 1.1.

1.3 DEVELOPMENT means the construction of a mixed-use development, which plans and scope must be approved by the CITY, containing a minimum of 150 units of multi-family housing, a minimum of 14,500 square feet of commercial space including office, retail, food and beverage and/or personal services and a multi-level parking garage with a minimum of 320 spaces of which at least 160 are dedicated to public use, as well as the redevelopment of the Knapp Heritage Park. The DEVELOPMENT shall be not less than 5 stories in height.

1.4 CITY TRACTS means the property owned by the CITY and consisting of 201 N West Street, 309 W Front Street, 200 N Oak Street and Alley #1 and Alley #2 as shown on **Exhibit "B"**.

Section 2. Term.

This AGREEMENT shall be effective as of the Effective Date. This AGREEMENT will terminate on the date all obligations under this AGREEMENT have been fulfilled unless earlier terminated.

Section 3. DEVELOPER's Requirements.

3.1 In consideration of the CITY entering into this AGREEMENT providing for the payment of funds constituting a Grant to DEVELOPER under the terms and conditions set forth herein, DEVELOPER agrees to:

- a. Complete a Phase 1 and Phase 2 Environmental Site Assessment for the PREMISES and comply with any reasonable recommendations, and close title on each parcel described in section 1.1 and complete asbestos remediation and demolition and/or removal of the existing structures located at the addresses listed in section 1.1 within the earlier of twelve (12) months after closing or eighteen (18) months from the Effective Date of this AGREEMENT.
- b. DEVELOPER shall submit to the CITY plans for the DEVELOPMENT on the PREMISES and CITY TRACTS, if applicable, and any related applications for additional incentives for the DEVELOPMENT within

twenty-four (24) months after closing on the properties and shall commence construction of the DEVELOPMENT within thirty-six (36) months after closing.

- c. During the term of this AGREEMENT, DEVELOPER shall not allow the ad valorem taxes owed to CITY on the PREMISES, the DEVELOPMENT or any property owned by DEVELOPER and located within the City of Arlington to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall DEVELOPER fail to render for taxation any property subject to rendition that is owned by DEVELOPER and located within the City of Arlington.
- d. DEVELOPER covenants and certifies that DEVELOPER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f), DEVELOPER shall repay to the CITY the grant provided in Section 4 of this AGREEMENT, plus 10% per annum from the date the reimbursement was made. Repayment shall be paid within 120 days after the date DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f).

Section 4. Grant by CITY.

In exchange for DEVELOPER'S compliance with all terms and provisions of this AGREEMENT, CITY hereby agrees, as an incentive, to make a grant to DEVELOPER in an amount equal to \$1,175,000 for acquisition costs, paid out to DEVELOPER sixty (60) days prior to closing upon DEVELOPER given notice to CITY that all obligations to close under the purchase agreements have been satisfied and a closing date has been set. CITY also agrees to reimburse DEVELOPER for expenses incurred, up to \$430,000, for appraisals, surveying and any other expense incurred acquiring the PREMISE or conducting DEMOLITION. Reimbursement shall be made within (30) days of DEVELOPER providing CITY with substantiation of expenses incurred.

Section 5. City Tracts.

Should the DEVELOPMENT, which plan and scope must be approved by the CITY, require inclusion of all or a portion of the CITY TRACTS then the CITY agrees to negotiate in good faith the transfer of such property to the DEVELOPER for its timely incorporation into the DEVELOPMENT.

Section 6. Indemnification.

DEVELOPER does hereby agree to waive all claims, release, indemnify, defend and hold harmless the CITY, and all of their officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of DEVELOPER, its officers, agents, or employees arising out of or in connection with the performance of this AGREEMENT, and DEVELOPER will at its own cost and expense defend and protect the CITY from any and all such claims and demands. Such indemnities shall apply whether the claims, losses, damages, suits, demands or causes of action arise in whole or in part from the negligence (but not the gross negligence or intentional misconduct) of the CITY, its officers, officials, agents or employees. It is the express intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by DEVELOPER to waive all claims, release, indemnify, defend and hold harmless the CITY from the consequences of the CITY's own ordinary negligence (but not gross negligence or intentional misconduct), whether that negligence is a sole or concurring cause of the injury, death or damage.

The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the DEVELOPER or any contractor or subcontractor under workman's compensation or other employee benefit acts.

Section 7. Access to Information.

The DEVELOPER agrees to provide the CITY access to information related to the costs and the completion of the acquisition, remediation, demolition and construction of the DEVELOPMENT during regular business hours upon reasonable notice. The CITY shall have the right to require the DEVELOPER to submit any necessary information, documents, invoices, receipts or other records to verify the costs and the completion of acquisition, asbestos remediation, demolition and construction of the DEVELOPMENT.

Section 8. Force Majeure.

It is expressly understood and agreed by the Parties to this AGREEMENT that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other Party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this AGREEMENT to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time

period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

Section 9. Default and Termination.

9.1 A default shall exist under this AGREEMENT if either Party fails to perform or observe any material covenant contained in this AGREEMENT. The non-defaulting Party shall immediately notify the defaulting Party in writing upon becoming aware of any condition or event constituting a default. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting Party requires or proposes to require with respect to curing the default.

9.2 If a default shall occur and continue after thirty (30) days' notice of the same, the non-defaulting Party may, at its option, pursue any remedies it may be entitled to, at law or in equity, in accordance with Applicable Law, without the necessity of future notice to or demand upon the defaulting Party. The non-defaulting Party shall not, however, pursue remedies for as long as the defaulting party proceeds in good faith and with due diligence to remedy and correct the default, provided that defaulting Party has commenced to cure such default within thirty (30) days following notices, and provided further, that in no event shall failure to make monetary payments required under the terms of this AGREEMENT be deemed reasonable justification to extend such opportunity beyond the initial period.

9.3 Without limiting the forgoing, if a defaulting Party fails to cure (or commence to cure) a default within the periods provided for in Section 9.2 above, then the non-defaulting Party shall have the right to terminate this AGREEMENT by delivering written notice on the defaulting Party, which termination shall be effective thirty (30) days following delivery of such notice unless the defaulting Party shall cure such default within such additional thirty (30) day period. A termination of this AGREEMENT by either Party shall not relieve the Party of its obligations therefore accrued prior to and through the effective date of such termination.

9.4 In the event DEVELOPER does not commence construction as discussed in Section 3, and fails to timely cure in accordance with Section 9.2, DEVELOPER shall sell the PREMISES to CITY for zero dollars (\$0.00) via special warranty deed; it shall be the sole remedy of the CITY. CITY shall provide DEVELOPER written notice after the cure period has expired and DEVELOPER shall have sixty (60) days from the date the CITY provides such written notice to sell the PREMISES to the CITY for zero dollars (\$0.00).

Section 10. Venue.

This AGREEMENT is performable in Tarrant County, Texas and venue of any action arising out of this AGREEMENT shall be exclusively in Tarrant County. This AGREEMENT shall be governed and construed in accordance with the laws of the State of Texas.

Section 11. Notices.

Any notice required by this AGREEMENT shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either Party to designate a different address by notice given in the manner just described.

If intended for CITY, to:

City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231
ATTN: Economic Development Manager

Copy to:

Office of the City Attorney
The City of Arlington MS #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for DEVELOPER, to:

The Nehemiah Company
835 E. Lamar Blvd. #175
Arlington, Texas 76011
Attn: Robert H. Kembel

Copy to:

Barry R. Knight
Attorney at Law
3521 Rankin Street
Dallas, Texas 75205

Section 12. Applicable Laws.

This AGREEMENT is made subject to the provisions of the Charter and ordinances of CITY, as amended, and all applicable State and Federal laws, and violation of same shall constitute a default under this AGREEMENT.

Section 13. Legal Construction.

In case any one or more of the provisions contained in this AGREEMENT shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Section 14. 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.

Section 15. Successors and Assigns.

The terms and conditions of this AGREEMENT are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where THE NEHEMIAH LLC (or other entity owned and controlled by THE NEHEMIAH LLC) is the general partner shall be expressly allowed without City Council approval.

Section 16. Entire Agreement.

This AGREEMENT including the recitals contained herein embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to matters in this AGREEMENT, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this AGREEMENT.

Section 17. Remedies.

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this AGREEMENT may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this AGREEMENT.

Section 18. No Third-Party Beneficiaries.

For purposes of this AGREEMENT, including its intended operation and effect, the parties specifically agree that: (1) the AGREEMENT only affects matters/disputes between the parties to this AGREEMENT, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or DEVELOPER or both; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or DEVELOPER.

Section 19. Procurement of Goods and Services from Arlington Businesses and/or Historically Underutilized Businesses.

During demolition of the PREMISES and design and construction of DEVELOPMENT, DEVELOPER agrees to use reasonable diligent efforts and to cause its contractors and subcontractors to use reasonable diligent efforts to purchase goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. DEVELOPER also agrees to develop a policy that establishes a goal of thirty percent (30%) use by DEVELOPER of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for demolition of the structures on the PREMISES and design and construction of the DEVELOPMENT.

Section 20. Headings.

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

THE NEHEMIAH, LLC,
A Texas limited liability company

By: _____
Robert H. Kembel, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

THE NEHEMIAH, LLC.
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Robert H. Kembel, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **THE NEHEMIAH, LLC**, an entity duly authorized to do business in the State of Texas, and as the manager thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2022.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

CITY OF ARLINGTON, TEXAS

By: _____
Trey Yelverton, City Manager

ATTEST:

Alex Busken, City Secretary

APPROVED AS TO FORM:

Teris Solis, City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2022.

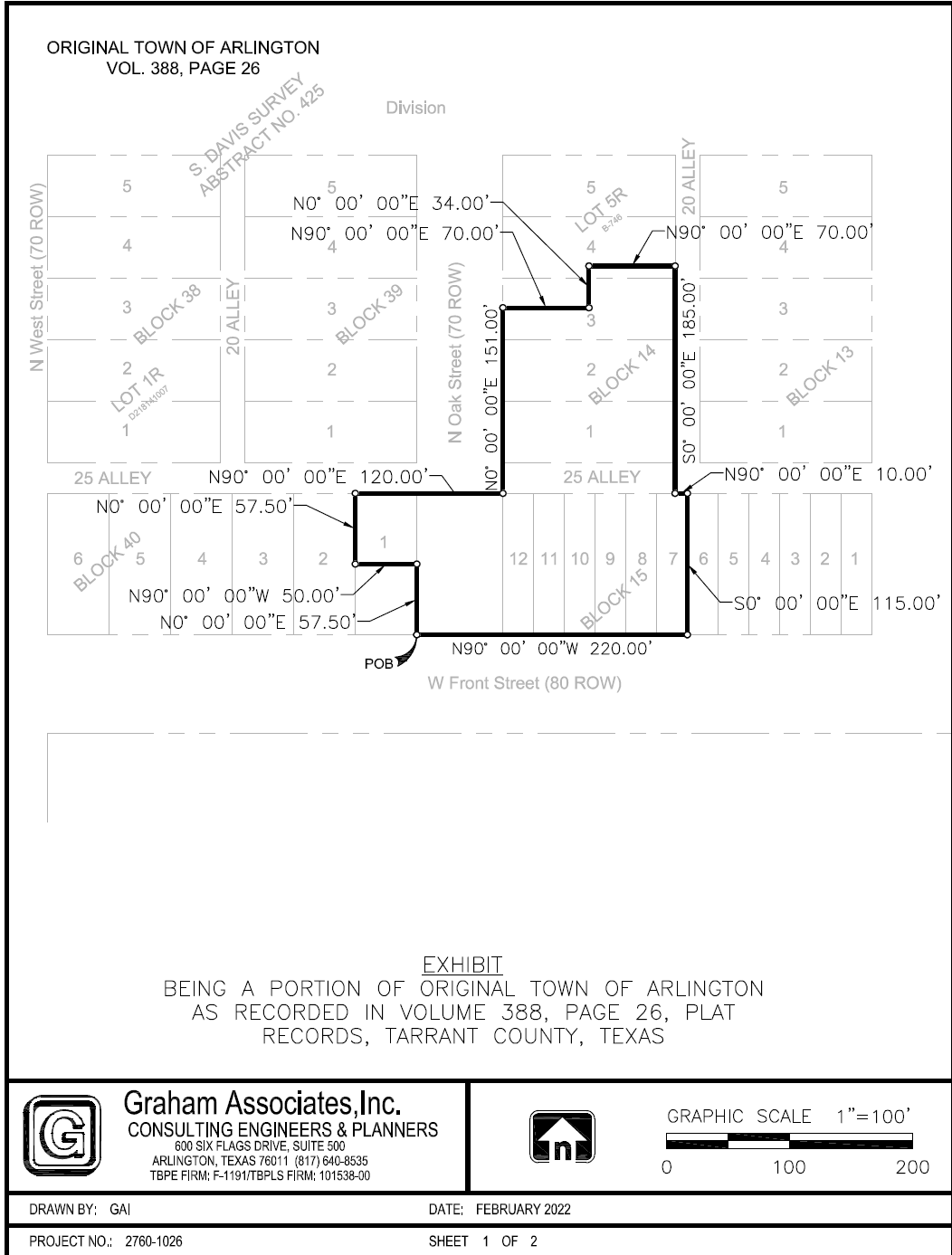
Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

EXHIBIT "A"

Premises



Being a 1.187 acre tract of land situated in the S. Davis Survey, Abstract No. 425, and being a portion of Lot 1, Block 40, all of Lots 7 through 12, Block 15, all of Lots 1 and 2 and a portion of Lots 3 and 4, Block 14, and a portion of a 25 foot public alley (having a 25 foot public right-of-way), and a portion of North Oak Street (having a 70 foot public right-of-way), according to the map of the Original Town of Arlington Addition, as recorded in Volume 388, Page 26, Plat Records, Tarrant County, Texas and being more particularly described as follows:

BEGINNING at the southeast corner of Lot 1, Block 40, of said Original Town of Arlington Addition, and being in the west line of said North Oak Street and the North line of West Front Street (80 foot right-of-way);

THENCE North 00°00'00" East, along said west right-of-way line and along the east line of said Lot 1, being a common line, a distance of 57.50 feet, to a point;

THENCE North 90°00'00" West, leaving said common line, a distance of 50.00 feet to a point being in the west line of said Lot 1 and being in the east line of Lot 2, being a common line;

THENCE North 00°00'00" East, along said common line, a distance of 57.50 feet to the northwest corner of said Lot 1, and the northeast corner of said Lot 2, and also being in the South line of a 25 foot public alley;

THENCE North 90°00'00" East, along the south right-of-way line of said alley and across North Oak Street (70 foot right-of-way), a distance of 120.00 feet to the Northwest corner of Lot 12, Block 15, of said Original Town of Arlington Addition, said point being in the East line of said North Oak Street and in the South line of a 25 foot public alley;

THENCE North 00°00'00" East along the east right-of-way line of said North Oak Street, a distance of 151.00 feet to the Southwest corner of Lot 5R, Block 14, Original Town of Arlington Addition, as recorded in Cabinet B, Slide 746, Plat Records, Tarrant County, Texas;

THENCE North 90°00'00" East, along the south line of said Lot 5R, a distance of 70.00 feet;

THENCE North 00°00'00" East, continuing along said south line, a distance of 34.00 feet;

THENCE North 90°00'00" East, a distance of 70.00 feet to the Southeast corner of said Lot 5R and being in the West line of a 20 foot public alley;

THENCE South 00°00'00" East, leaving said south line, along the West line of said alley and passing at a distance of 160.00 feet the southeast corner of Lot 1, Block 14, of said Original Town of Arlington Addition, a total distance of 185.00 feet to a point in the north line of Lot 7, Block 15, of said Original Town of Arlington Addition and being in the South line of a 25 foot public alley;

THENCE North 90°00'00" East, along the south right-of-way line of said 25 foot public alley, a distance of 10.00 feet to the Northwest corner of Lot 6, Block 15, of said Original Town of Arlington Addition;

THENCE South 00°00'00" East, along the West line of said Lot 6, Block 15, a distance of 115.00 feet to the Southwest corner of said Lot 6, Block 15 and being in the north right-of-way line of said West Front Street;

THENCE North 90°00'00" West, along the north right-of-way line of said West Front Street, a distance of 220.00 feet to the **POINT OF BEGINNING** and containing 51,695 square feet, 1.187 acres of land, more or less.

Basis of Bearings: Original Town of Arlington Addition, Volume 388, Page 26, Plat Records, Tarrant County, Texas, Cardinal Directions Assumed.

THE STATE OF TEXAS § **CHAPTER 380 PROGRAM AGREEMENT**
 § **FOR ECONOMIC DEVELOPMENT**
COUNTY OF TARRANT § **INCENTIVES**

This AGREEMENT (the "AGREEMENT") is executed on March 30th, 2022, (hereafter referred to as "Effective Date") by and between the **CITY OF ARLINGTON**, a municipal corporation of Tarrant County, Texas, (hereinafter called "CITY"), and **THE NEHEMIAH, LLC.**, a Texas limited liability corporation, (hereinafter called "DEVELOPER"). CITY and DEVELOPER may be referred to jointly herein as the "Parties" and individually as a "Party."

WITNESSETH:

- WHEREAS, DEVELOPER is in active negotiations to control certain PREMISES defined below in Downtown Arlington, Texas, which are currently underdeveloped; and
- WHEREAS, the PREMISES are located within Tax Increment Reinvestment Zone Number One ("TIRZ 1"); and
- WHEREAS, DEVELOPER desires to demolish and/or remove the existing structures and construct a mixed-use project on the PREMISES; and
- WHEREAS, CITY has found that providing a program consisting of a grant of funds to DEVELOPER in exchange for DEVELOPER's completion of the project proposed by DEVELOPER will promote local economic development and stimulate business and commercial activity and create jobs within the CITY (hereafter referred to as "PROGRAM"); and
- WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that public purpose is accomplished; and
- WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; NOW THEREFORE,

The CITY and DEVELOPER, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

Section 1. Definitions.

- 1.1** PREMISES means the property located at the following street addresses all located in Arlington, Texas, 76011 more fully described by metes and bounds in **Exhibit "A"**.

1. 211 W Front Street
2. 217 W Front Street
3. 204 N Oak Street
4. 207 N Oak Street
5. 209 N Oak Street

1.2 DEMOLITION means the demolition and/or removal of all existing structures on the land described in subsection 1.1.

1.3 DEVELOPMENT means the construction of a mixed-use development, which plans and scope must be approved by the CITY, containing a minimum of 150 units of multi-family housing, a minimum of 14,500 square feet of commercial space including office, retail, food and beverage and/or personal services and a multi-level parking garage with a minimum of 320 spaces of which at least 160 are dedicated to public use, as well as the redevelopment of the Knapp Heritage Park. The DEVELOPMENT shall be not less than 5 stories in height.

1.4 CITY TRACTS means the property owned by the CITY and consisting of 201 N West Street, 309 W Front Street, 200 N Oak Street and Alley #1 and Alley #2 as shown on **Exhibit "B"**.

Section 2. Term.

This AGREEMENT shall be effective as of the Effective Date. This AGREEMENT will terminate on the date all obligations under this AGREEMENT have been fulfilled unless earlier terminated.

Section 3. DEVELOPER's Requirements.

3.1 In consideration of the CITY entering into this AGREEMENT providing for the payment of funds constituting a Grant to DEVELOPER under the terms and conditions set forth herein, DEVELOPER agrees to:

- a. Complete a Phase 1 and Phase 2 Environmental Site Assessment for the PREMISES and comply with any reasonable recommendations, and close title on each parcel described in section 1.1 and complete asbestos remediation and demolition and/or removal of the existing structures located at the addresses listed in section 1.1 within the earlier of twelve (12) months after closing or eighteen (18) months from the Effective Date of this AGREEMENT.
- b. DEVELOPER shall submit to the CITY plans for the DEVELOPMENT on the PREMISES and CITY TRACTS, if applicable, and any related applications for additional incentives for the DEVELOPMENT within

twenty-four (24) months after closing on the properties and shall commence construction of the DEVELOPMENT within thirty-six (36) months after closing.

- c. During the term of this AGREEMENT, DEVELOPER shall not allow the ad valorem taxes owed to CITY on the PREMISES, the DEVELOPMENT or any property owned by DEVELOPER and located within the City of Arlington to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall DEVELOPER fail to render for taxation any property subject to rendition that is owned by DEVELOPER and located within the City of Arlington.
- d. DEVELOPER covenants and certifies that DEVELOPER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f), DEVELOPER shall repay to the CITY the grant provided in Section 4 of this AGREEMENT, plus 10% per annum from the date the reimbursement was made. Repayment shall be paid within 120 days after the date DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f).

Section 4. Grant by CITY.

In exchange for DEVELOPER'S compliance with all terms and provisions of this AGREEMENT, CITY hereby agrees, as an incentive, to make a grant to DEVELOPER in an amount equal to \$1,175,000 for acquisition costs, paid out to DEVELOPER sixty (60) days prior to closing upon DEVELOPER given notice to CITY that all obligations to close under the purchase agreements have been satisfied and a closing date has been set. CITY also agrees to reimburse DEVELOPER for expenses incurred, up to \$430,000, for appraisals, surveying and any other expense incurred acquiring the PREMISE or conducting DEMOLITION. Reimbursement shall be made within (30) days of DEVELOPER providing CITY with substantiation of expenses incurred.

Section 5. City Tracts.

Should the DEVELOPMENT, which plan and scope must be approved by the CITY, require inclusion of all or a portion of the CITY TRACTS then the CITY agrees to negotiate in good faith the transfer of such property to the DEVELOPER for its timely incorporation into the DEVELOPMENT.

Section 6. Indemnification.

DEVELOPER does hereby agree to waive all claims, release, indemnify, defend and hold harmless the CITY, and all of their officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of DEVELOPER, its officers, agents, or employees arising out of or in connection with the performance of this AGREEMENT, and DEVELOPER will at its own cost and expense defend and protect the CITY from any and all such claims and demands. Such indemnities shall apply whether the claims, losses, damages, suits, demands or causes of action arise in whole or in part from the negligence (but not the gross negligence or intentional misconduct) of the CITY, its officers, officials, agents or employees. It is the express intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by DEVELOPER to waive all claims, release, indemnify, defend and hold harmless the CITY from the consequences of the CITY's own ordinary negligence (but not gross negligence or intentional misconduct), whether that negligence is a sole or concurring cause of the injury, death or damage.

The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the DEVELOPER or any contractor or subcontractor under workman's compensation or other employee benefit acts.

Section 7. Access to Information.

The DEVELOPER agrees to provide the CITY access to information related to the costs and the completion of the acquisition, remediation, demolition and construction of the DEVELOPMENT during regular business hours upon reasonable notice. The CITY shall have the right to require the DEVELOPER to submit any necessary information, documents, invoices, receipts or other records to verify the costs and the completion of acquisition, asbestos remediation, demolition and construction of the DEVELOPMENT.

Section 8. Force Majeure.

It is expressly understood and agreed by the Parties to this AGREEMENT that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other Party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this AGREEMENT to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time

period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

Section 9. Default and Termination.

9.1 A default shall exist under this AGREEMENT if either Party fails to perform or observe any material covenant contained in this AGREEMENT. The non-defaulting Party shall immediately notify the defaulting Party in writing upon becoming aware of any condition or event constituting a default. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting Party requires or proposes to require with respect to curing the default.

9.2 If a default shall occur and continue after thirty (30) days' notice of the same, the non-defaulting Party may, at its option, pursue any remedies it may be entitled to, at law or in equity, in accordance with Applicable Law, without the necessity of future notice to or demand upon the defaulting Party. The non-defaulting Party shall not, however, pursue remedies for as long as the defaulting party proceeds in good faith and with due diligence to remedy and correct the default, provided that defaulting Party has commenced to cure such default within thirty (30) days following notices, and provided further, that in no event shall failure to make monetary payments required under the terms of this AGREEMENT be deemed reasonable justification to extend such opportunity beyond the initial period.

9.3 Without limiting the forgoing, if a defaulting Party fails to cure (or commence to cure) a default within the periods provided for in Section 9.2 above, then the non-defaulting Party shall have the right to terminate this AGREEMENT by delivering written notice on the defaulting Party, which termination shall be effective thirty (30) days following delivery of such notice unless the defaulting Party shall cure such default within such additional thirty (30) day period. A termination of this AGREEMENT by either Party shall not relieve the Party of its obligations therefore accrued prior to and through the effective date of such termination.

9.4 In the event DEVELOPER does not commence construction as discussed in Section 3, and fails to timely cure in accordance with Section 9.2, DEVELOPER shall sell the PREMISES to CITY for zero dollars (\$0.00) via special warranty deed; it shall be the sole remedy of the CITY. CITY shall provide DEVELOPER written notice after the cure period has expired and DEVELOPER shall have sixty (60) days from the date the CITY provides such written notice to sell the PREMISES to the CITY for zero dollars (\$0.00).

Section 10. Venue.

This AGREEMENT is performable in Tarrant County, Texas and venue of any action arising out of this AGREEMENT shall be exclusively in Tarrant County. This AGREEMENT shall be governed and construed in accordance with the laws of the State of Texas.

Section 11. Notices.

Any notice required by this AGREEMENT shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either Party to designate a different address by notice given in the manner just described.

If intended for CITY, to:

City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231
ATTN: Economic Development Manager

Copy to:

Office of the City Attorney
The City of Arlington MS #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for DEVELOPER, to:

The Nehemiah Company
835 E. Lamar Blvd. #175
Arlington, Texas 76011
Attn: Robert H. Kembel

Copy to:

Barry R. Knight
Attorney at Law
3521 Rankin Street
Dallas, Texas 75205

Section 12. Applicable Laws.

This AGREEMENT is made subject to the provisions of the Charter and ordinances of CITY, as amended, and all applicable State and Federal laws, and violation of same shall constitute a default under this AGREEMENT.

Section 13. Legal Construction.

In case any one or more of the provisions contained in this AGREEMENT shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Section 14. 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.

Section 15. Successors and Assigns.

The terms and conditions of this AGREEMENT are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where THE NEHEMIAH LLC (or other entity owned and controlled by THE NEHEMIAH LLC) is the general partner shall be expressly allowed without City Council approval.

Section 16. Entire Agreement.

This AGREEMENT including the recitals contained herein embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to matters in this AGREEMENT, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this AGREEMENT.

Section 17. Remedies.

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this AGREEMENT may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this AGREEMENT.

Section 18. No Third-Party Beneficiaries.

For purposes of this AGREEMENT, including its intended operation and effect, the parties specifically agree that: (1) the AGREEMENT only affects matters/disputes between the parties to this AGREEMENT, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or DEVELOPER or both; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or DEVELOPER.

Section 19. Procurement of Goods and Services from Arlington Businesses and/or Historically Underutilized Businesses.

During demolition of the PREMISES and design and construction of DEVELOPMENT, DEVELOPER agrees to use reasonable diligent efforts and to cause its contractors and subcontractors to use reasonable diligent efforts to purchase goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. DEVELOPER also agrees to develop a policy that establishes a goal of thirty percent (30%) use by DEVELOPER of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for demolition of the structures on the PREMISES and design and construction of the DEVELOPMENT.

Section 20. Headings.

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

THE NEHEMIAH, LLC,
A Texas limited liability company

By: [Signature]
Robert H. Kembel, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

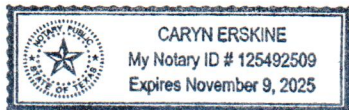
THE NEHEMIAH, LLC.
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Robert H. Kembel, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **THE NEHEMIAH, LLC**, an entity duly authorized to do business in the State of Texas, and as the manager thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

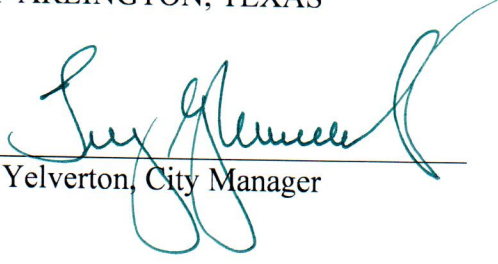
GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30th day of March, 2022.

11/9/2025
My Commission Expires

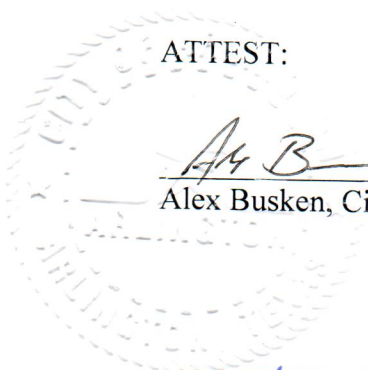
[Signature]
Notary Public in and for
The State of Texas
Caryn Erskine
Notary's Printed Name




CITY OF ARLINGTON, TEXAS

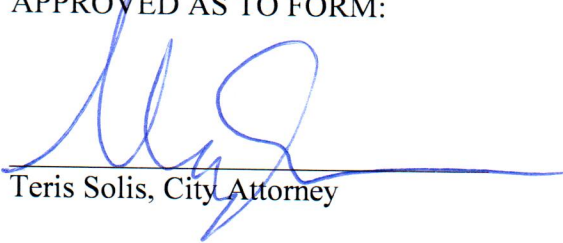
By: 
Trey Yelverton, City Manager

ATTEST:




Alex Busken, City Secretary

APPROVED AS TO FORM:


Teris Solis, City Attorney

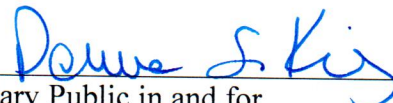
THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 8th day of April, 2022.

11/27/25
My Commission Expires


Notary Public in and for
The State of Texas
Donna S. King
Notary's Printed Name

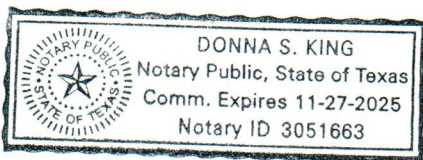
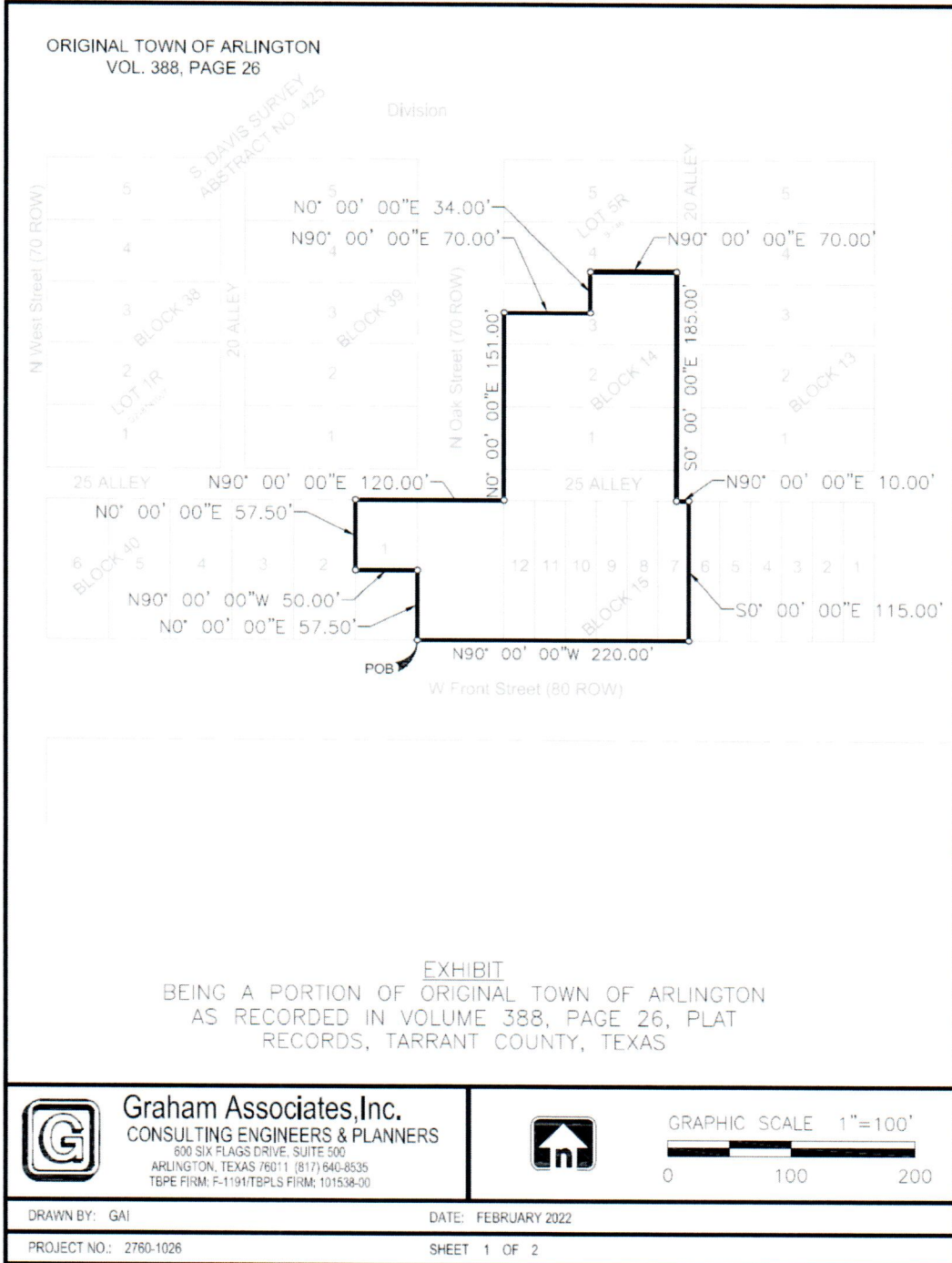


EXHIBIT "A"

Premises



Being a 1.187 acre tract of land situated in the S. Davis Survey, Abstract No. 425, and being a portion of Lot 1, Block 40, all of Lots 7 through 12, Block 15, all of Lots 1 and 2 and a portion of Lots 3 and 4, Block 14, and a portion of a 25 foot public alley (having a 25 foot public right-of-way), and a portion of North Oak Street (having a 70 foot public right-of-way), according to the map of the Original Town of Arlington Addition, as recorded in Volume 388, Page 26, Plat Records, Tarrant County, Texas and being more particularly described as follows:

BEGINNING at the southeast corner of Lot 1, Block 40, of said Original Town of Arlington Addition, and being in the west line of said North Oak Street and the North line of West Front Street (80 foot right-of-way);

THENCE North 00°00'00" East, along said west right-of-way line and along the east line of said Lot 1, being a common line, a distance of 57.50 feet, to a point;

THENCE North 90°00'00" West, leaving said common line, a distance of 50.00 feet to a point being in the west line of said Lot 1 and being in the east line of Lot 2, being a common line;

THENCE North 00°00'00" East, along said common line, a distance of 57.50 feet to the northwest corner of said Lot 1, and the northeast corner of said Lot 2, and also being in the South line of a 25 foot public alley;

THENCE North 90°00'00" East, along the south right-of-way line of said alley and across North Oak Street (70 foot right-of-way), a distance of 120.00 feet to the Northwest corner of Lot 12, Block 15, of said Original Town of Arlington Addition, said point being in the East line of said North Oak Street and in the South line of a 25 foot public alley;

THENCE North 00°00'00" East along the east right-of-way line of said North Oak Street, a distance of 151.00 feet to the Southwest corner of Lot 5R, Block 14, Original Town of Arlington Addition, as recorded in Cabinet B, Slide 746, Plat Records, Tarrant County, Texas;

THENCE North 90°00'00" East, along the south line of said Lot 5R, a distance of 70.00 feet;

THENCE North 00°00'00" East, continuing along said south line, a distance of 34.00 feet;

THENCE North 90°00'00" East, a distance of 70.00 feet to the Southeast corner of said Lot 5R and being in the West line of a 20 foot public alley;

THENCE South 00°00'00" East, leaving said south line, along the West line of said alley and passing at a distance of 160.00 feet the southeast corner of Lot 1, Block 14, of said Original Town of Arlington Addition, a total distance of 185.00 feet to a point in the north line of Lot 7, Block 15, of said Original Town of Arlington Addition and being in the South line of a 25 foot public alley;

THENCE North 90°00'00" East, along the south right-of-way line of said 25 foot public alley, a distance of 10.00 feet to the Northwest corner of Lot 6, Block 15, of said Original Town of Arlington Addition;

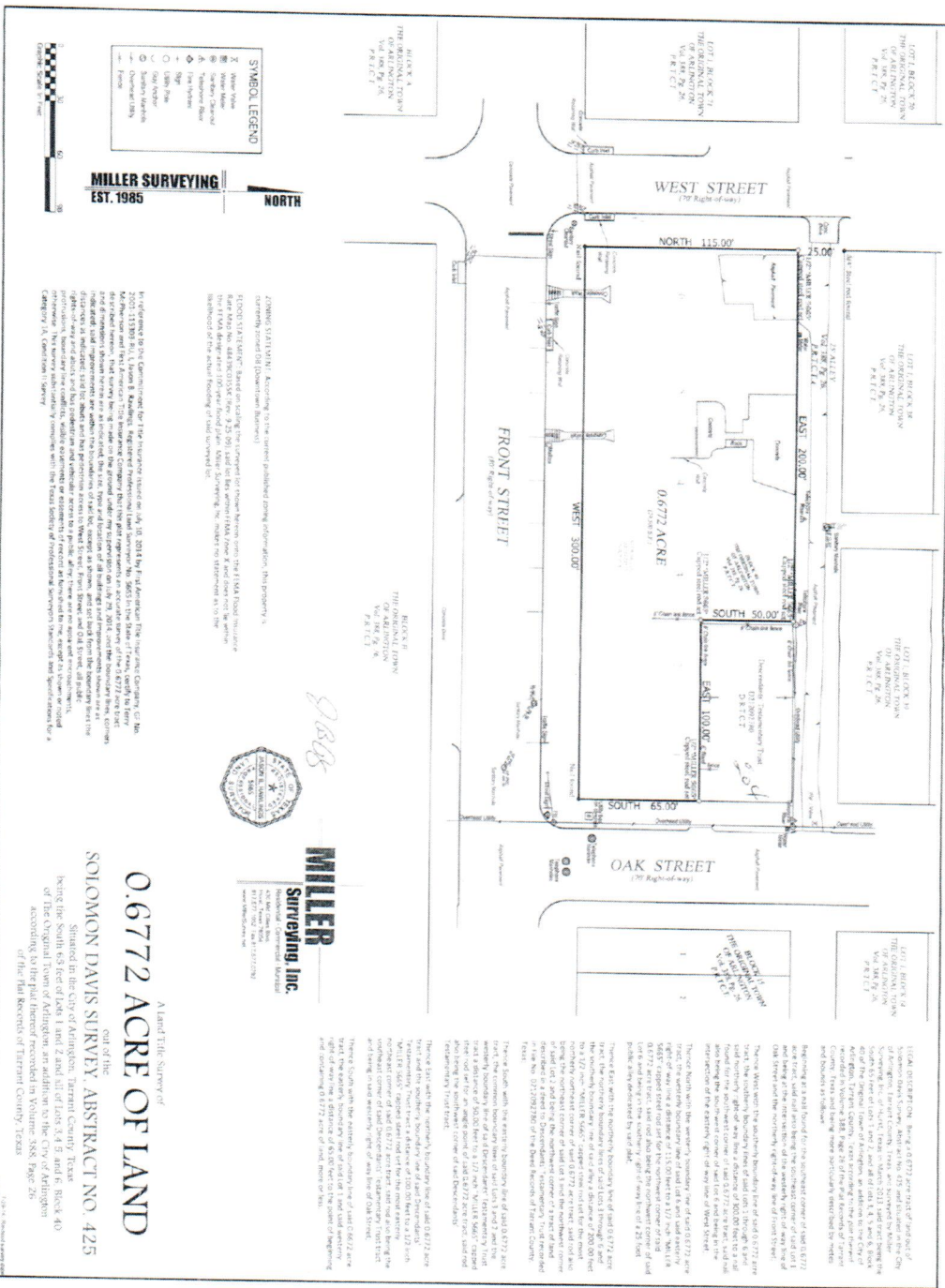
THENCE South 00°00'00" East, along the West line of said Lot 6, Block 15, a distance of 115.00 feet to the Southwest corner of said Lot 6, Block 15 and being in the north right-of-way line of said West Front Street;

THENCE North 90°00'00" West, along the north right-of-way line of said West Front Street, a distance of 220.00 feet to the **POINT OF BEGINNING** and containing 51,695 square feet, 1.187 acres of land, more or less.

Basis of Bearings: Original Town of Arlington Addition, Volume 388, Page 26, Plat Records, Tarrant County, Texas, Cardinal Directions Assumed.

EXHIBIT "B"

City Tracts



Staff Report



Amended and Restated Chapter 380 Program Agreement for Economic Development Incentives–Front Street Redevelopment	
City Council Meeting Date: 06-27-2023	Document Being Considered: Resolution

RECOMMENDATION

Approve a resolution authorizing execution of an Amended and Restated Chapter 380 Program Agreement for Economic Development Incentives by and between TNC Front St 1 LLC and the City of Arlington, Texas relative to the construction of a mixed-use development project.

PRIOR BOARD OR COUNCIL ACTION

On March 8, 2022, City Council approved Resolution No. 22-052, authorizing the execution of a Chapter 380 Program Agreement for Economic Development Incentives by and between The Nehemiah, LLC and the City of Arlington, Texas relative to the construction of a mixed-use development project on West Front Street in the amount of \$1,605,000.

ANALYSIS

In March of 2022, the City entered into a Chapter 380 Program Agreement for Economic Development Incentives (“Agreement”) with The Nehemiah, LLC. In November of 2022, The Nehemiah, LLC assigned the Agreement to TNC Front St 1 LLC (“Developer”), an entity controlled by The Nehemiah, LLC. The Developer is planning to redevelop an area of downtown Arlington located north of Front Street and east of West Street through construction of a mixed-use development. The mixed-use development would include a minimum of 150 units of multi-family housing, a minimum of 14,500 square feet of commercial space to include office, retail, restaurant, and personal services, as well as a minimum 320 space parking garage of which at least 160 spaces would be dedicated for public parking.

The Agreement provides the Developer with funds to offset the costs of acquiring, completing environmental remediation, and demolishing structures located at 211 W. Front Street, 217 W. Front Street, 217 W. Front Street, 204 N. Oak Street, 207 N. Oak Street, and 209 N. Oak Street (“Property”). The Developer is also obligated to submit final plans and scope of the mixed-use development to the City for approval. The grant provides for \$1,175,000 for the acquisition costs and up to \$430,000 for appraisals, surveys, and demolition costs. If the Developer does not timely complete the development milestones established in the agreement, then the Developer is obligated to give the Property, at no cost, to the City.

Due to unanticipated delays, it has taken the Developer more time to secure the Property and complete the required environmental remediation and demolition and they have requested an extension of time. The proposed Amended and Restated Agreement amends the original Agreement to extend the deadline to acquire the Property and complete the required environmental remediation and demolition until May 31, 2024, the deadline to submit the plans for the redevelopment to the City and request additional incentives for the redevelopment until May 31, 2025, and the deadline to commence construction of the redevelopment until May 31, 2026.

FINANCIAL IMPACT

The proposed changes to the Agreement do not impact the grant amount. To date \$1,224,000 of the \$1,605,000 grant has been paid to the Developer. The Innovation and Venture Capital Fund (Account No. 910103-61002) will be used to fund the balance of the grant.

ADDITIONAL INFORMATION

Attached:	Resolution with agreement.
Under Separate Cover:	None
Available in the City Secretary's Office:	None

STAFF CONTACT(S)

Bruce Payne
Economic Development Manager
(817)-459-6114
bruce.payne@arlingtontx.gov

Resolution No. 23-178

A resolution authorizing the execution of an Amended and Restated Chapter 380 Program Agreement for Economic Development Incentives by and between TNC Front St 1 LLC and the City of Arlington, Texas relative to the construction of a mixed-use development project

WHEREAS, on March 8, 2022, by Resolution No. 22-052, City Council authorized the execution of a Chapter 380 Program Agreement for Economic Development Incentives (“Agreement”) by and between The Nehemiah, LLC relative to the construction of a mixed-use development project on West Front Street in the amount of \$1,605,000; and

WHEREAS, in November 2022, The Nehemiah, LLC assigned the Agreement to TNC Front St 1 LLC (“Developer”), an entity controlled by The Nehemiah, LLC; and

WHEREAS, the Agreement provides the Developer with funds to offset the costs of acquiring, completing environmental remediation, and demolishing structures located at 211 W. Front Street, 217 W. Front Street, 217 W. Front Street, 204 N. Oak Street, 207 N. Oak Street, and 209 N. Oak Street (“Property”); and

WHEREAS, due to unanticipated delays, it has taken the Developer more time to secure the Property and complete the required environmental remediation and demolition and they have requested an extension of time; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute an Amended and Restated Chapter 380 Program Agreement for Economic Development Incentives with TNC Front St 1 LLC to provide certain economic incentives associated with the construction of a mixed-use development project in Arlington, Texas.

III.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

IV.

A substantial copy of the Amended and Restated Chapter 380 Program Agreement for Economic Development Incentives is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 27th day of June, 2023, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



JIM R. ROSS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
MOLLY SHORTALL, City Attorney

BY 

Exhibit "A"



THE STATE OF TEXAS § AMENDED AND RESTATED CHAPTER 380
 § PROGRAM AGREEMENT
 § FOR ECONOMIC DEVELOPMENT
COUNTY OF TARRANT § INCENTIVES

This AMENDED AND RESTATED CHAPTER 380 PROGRAM AGREEMENT FOR ECONOMIC DEVELOPMENT INCENTIVES (the "AGREEMENT") is executed on July 12 —, 2023, (hereafter referred to as "Effective Date") by and between the CITY OF ARLINGTON, a municipal corporation of Tarrant County, Texas, (hereinafter called "CITY"), and TNC FRONT ST 1 LLC, a Texas limited liability corporation, (hereinafter called "DEVELOPER"). CITY and DEVELOPER may be referred to jointly herein as the "Parties" and individually as a "Party."

WITNESSETH:

- WHEREAS, DEVELOPER is in active negotiations to control certain PREMISES defined below in Downtown Arlington, Texas, which are currently underdeveloped; and
- WHEREAS, the PREMISES are located within Tax Increment Reinvestment Zone Number One ("TIRZ 1"); and
- WHEREAS, DEVELOPER desires to demolish and/or remove the existing structures and construct a mixed-use project on the PREMISES; and
- WHEREAS, CITY has found that providing a program consisting of a grant of funds to DEVELOPER in exchange for DEVELOPER's completion of the project proposed by DEVELOPER will promote local economic development and stimulate business and commercial activity and create jobs within the CITY (hereafter referred to as "PROGRAM"); and
- WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that public purpose is accomplished; and
- WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and
- WHEREAS, on March 30, 2022 ("Original Effective Date") the CITY and The Nehemiah, LLC ("Original Developer") entered into the Chapter 380 Program Agreement for Economic Development Incentives ("Original Agreement"); and
- WHEREAS, on November 11, 2022 Original Developer assigned the Original Agreement to DEVELOPER; and

WHEREAS, the CITY and DEVELOPER desire to amend and restate the Original Agreement to amend certain deadlines for completion of Developer's requirements; NOW THEREFORE,

The CITY and DEVELOPER, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

Section 1. Definitions.

1.1 PREMISES means the property located at the following street addresses all located in Arlington, Texas, 76011 more fully described by metes and bounds in **Exhibit "A"**.

1. 211 W Front Street
2. 217 W Front Street
3. 204 N Oak Street
4. 207 N Oak Street
5. 209 N Oak Street

1.2 DEMOLITION means the demolition and/or removal of all existing structures on the land described in subsection 1.1.

1.3 DEVELOPMENT means the construction of a mixed-use development, which plans and scope must be approved by the CITY, containing a minimum of 150 units of multi-family housing, a minimum of 14,500 square feet of commercial space including office, retail, food and beverage and/or personal services and a multi-level parking garage with a minimum of 320 spaces of which at least 160 are dedicated to public use, as well as the redevelopment of the Knapp Heritage Park. The DEVELOPMENT shall be not less than 5 stories in height.

1.4 CITY TRACTS means the property owned by the CITY and consisting of 201 N West Street, 309 W Front Street, 200 N Oak Street and Alley #1 and Alley #2 as shown on **Exhibit "B"**.

Section 2. Term.

This AGREEMENT shall be effective as of the Original Effective Date. This AGREEMENT will terminate on the date all obligations under this AGREEMENT have been fulfilled unless earlier terminated.

Section 3. DEVELOPER's Requirements.

3.1 In consideration of the CITY entering into this AGREEMENT providing for the payment of funds constituting a Grant to DEVELOPER under the terms and conditions set forth herein, DEVELOPER agrees to:

- a. Complete a Phase 1 and Phase 2 Environmental Site Assessment for the PREMISES and comply with any reasonable recommendations, and close title on each parcel described in section 1.1 and complete asbestos remediation and demolition and/or removal of the existing structures located at the addresses listed in section 1.1 by no later than May 31, 2024.
- b. DEVELOPER shall submit to the CITY plans for the DEVELOPMENT on the PREMISES and CITY TRACTS, if applicable, and any related applications for additional incentives for the DEVELOPMENT by no later than May 31, 2025 and shall commence construction of the DEVELOPMENT by no later than May 31, 2026.
- c. During the term of this AGREEMENT, DEVELOPER shall not allow the ad valorem taxes owed to CITY on the PREMISES, the DEVELOPMENT or any property owned by DEVELOPER and located within the City of Arlington to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall DEVELOPER fail to render for taxation any property subject to rendition that is owned by DEVELOPER and located within the City of Arlington.
- d. DEVELOPER covenants and certifies that DEVELOPER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f), DEVELOPER shall repay to the CITY the grant provided in Section 4 of this AGREEMENT, plus 10% per annum from the date the reimbursement was made. Repayment shall be paid within 120 days after the date DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f).

Section 4. Grant by CITY.

In exchange for DEVELOPER'S compliance with all terms and provisions of this AGREEMENT, CITY hereby agrees, as an incentive, to make a grant to DEVELOPER in an amount equal to \$1,175,000 for acquisition costs, paid out to DEVELOPER sixty (60) days prior to closing upon DEVELOPER given notice to CITY that all obligations to close under the purchase agreements have been satisfied and a closing date has been set. CITY also agrees to reimburse DEVELOPER for expenses incurred, up to \$430,000, for appraisals, surveying and any other expense incurred acquiring the PREMISE or conducting DEMOLITION. Reimbursement shall be made within (30) days of DEVELOPER providing CITY with substantiation of expenses incurred.

Section 5. City Tracts.

Should the DEVELOPMENT, which plan and scope must be approved by the CITY, require inclusion of all or a portion of the CITY TRACTS then the CITY agrees to negotiate in good faith the transfer of such property to the DEVELOPER for its timely incorporation into the DEVELOPMENT.

Section 6. Indemnification.

DEVELOPER does hereby agree to waive all claims, release, indemnify, defend and hold harmless the CITY, and all of their officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of DEVELOPER, its officers, agents, or employees arising out of or in connection with the performance of this AGREEMENT, and DEVELOPER will at its own cost and expense defend and protect the CITY from any and all such claims and demands. Such indemnities shall apply whether the claims, losses, damages, suits, demands or causes of action arise in whole or in part from the negligence (but not the gross negligence or intentional misconduct) of the CITY, its officers, officials, agents or employees. It is the express intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by DEVELOPER to waive all claims, release, indemnify, defend and hold harmless the CITY from the consequences of the CITY's own ordinary negligence (but not gross negligence or intentional misconduct), whether that negligence is a sole or concurring cause of the injury, death or damage.

The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the DEVELOPER or any contractor or subcontractor under workman's compensation or other employee benefit acts.

Section 7. Access to Information.

The DEVELOPER agrees to provide the CITY access to information related to the costs and the completion of the acquisition, remediation, demolition and construction of the DEVELOPMENT during regular business hours upon reasonable notice. The CITY shall have the right to require the DEVELOPER to submit any necessary information, documents, invoices, receipts or other records to verify the costs and the completion of acquisition, asbestos remediation, demolition and construction of the DEVELOPMENT.

Section 8. Force Majeure.

It is expressly understood and agreed by the Parties to this AGREEMENT that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other Party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this AGREEMENT to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

Section 9. Default and Termination.

9.1 A default shall exist under this AGREEMENT if either Party fails to perform or observe any material covenant contained in this AGREEMENT. The non-defaulting Party shall immediately notify the defaulting Party in writing upon becoming aware of any condition or event constituting a default. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting Party requires or proposes to require with respect to curing the default.

9.2 If a default shall occur and continue after thirty (30) days' notice of the same, the non-defaulting Party may, at its option, pursue any remedies it may be entitled to, at law or in equity, in accordance with Applicable Law, without the necessity of future notice to or demand upon the defaulting Party. The non-defaulting Party shall not, however, pursue remedies for as long as the defaulting party proceeds in good faith and with due diligence to remedy and correct the default, provided that defaulting Party has commenced to cure such default within thirty (30) days following notices, and provided further, that in no event shall failure to make monetary payments required under the terms of this AGREEMENT be deemed reasonable justification to extend such opportunity beyond the initial period.

9.3 Without limiting the forgoing, if a defaulting Party fails to cure (or commence to cure) a default within the periods provided for in Section 9.2 above, then the non-defaulting Party shall have the right to terminate this AGREEMENT by delivering written notice on the defaulting Party, which termination shall be effective thirty (30) days following delivery of such notice unless the defaulting Party shall cure such default within such additional thirty (30) day period. A termination of this AGREEMENT by either Party shall not relieve the Party of its obligations therefore accrued prior to and through the effective date of such termination.

9.4 In the event DEVELOPER does not commence construction as discussed in Section 3, and fails to timely cure in accordance with Section 9.2, DEVELOPER shall sell the PREMISES to CITY for zero dollars (\$0.00) via special warranty deed; it shall be the sole remedy of the CITY. CITY shall provide DEVELOPER written notice after the cure period has expired and DEVELOPER shall have sixty (60) days from the date the CITY provides such written notice to sell the PREMISES to the CITY for zero dollars (\$0.00).

Section 10. Venue.

This AGREEMENT is performable in Tarrant County, Texas and venue of any action arising out of this AGREEMENT shall be exclusively in Tarrant County. This AGREEMENT shall be governed and construed in accordance with the laws of the State of Texas.

Section 11. Notices.

Any notice required by this AGREEMENT shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either Party to designate a different address by notice given in the manner just described.

If intended for CITY, to:

City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231
ATTN: Economic Development Manager

Copy to:

Office of the City Attorney
The City of Arlington MS #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for DEVELOPER, to:

TNC FRONT ST 1 LLC
835 E. Lamar Blvd. #175
Arlington, Texas 76011
Attn: Robert H. Kembel

Copy to:

Barry R. Knight
Attorney at Law
3521 Rankin Street
Dallas, Texas 75205

Section 12. Applicable Laws.

This AGREEMENT is made subject to the provisions of the Charter and ordinances of CITY, as amended, and all applicable State and Federal laws, and violation of same shall constitute a default under this AGREEMENT.

Section 13. Legal Construction.

In case any one or more of the provisions contained in this AGREEMENT shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Section 14. 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.

Section 15. Successors and Assigns.

The terms and conditions of this AGREEMENT are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where TNC FRONT ST 1 LLC (or other entity owned and controlled by TNC FRONT ST 1 LLC) is the general partner shall be expressly allowed without City Council approval.

Section 16. Entire Agreement.

This AGREEMENT including the recitals contained herein embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to matters in this AGREEMENT, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this AGREEMENT.

Section 17. Remedies.

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this AGREEMENT may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this AGREEMENT.

Section 18. No Third-Party Beneficiaries.

For purposes of this AGREEMENT, including its intended operation and effect, the parties specifically agree that: (1) the AGREEMENT only affects matters/disputes between the parties to this AGREEMENT, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or DEVELOPER or both; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or DEVELOPER.

Section 19. Procurement of Goods and Services from Arlington Businesses and/or Historically Underutilized Businesses.

During demolition of the PREMISES and design and construction of DEVELOPMENT, DEVELOPER agrees to use reasonable diligent efforts and to cause its contractors and subcontractors to use reasonable diligent efforts to purchase goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. DEVELOPER also agrees to develop a policy that establishes a goal of thirty percent (30%) use by DEVELOPER of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for demolition of the structures on the PREMISES and design and construction of the DEVELOPMENT.

Section 20. Headings.

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

TNC FRONT ST 1 LLC,
A Texas limited liability company

By: [Signature]
Robert H. Kembel, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

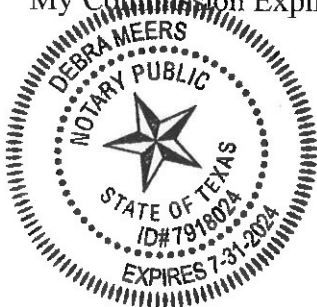
TNC FRONT ST 1 LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Robert H. Kembel, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **TNC FRONT ST 1 LLC**, an entity duly authorized to do business in the State of Texas, and as the manager thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 16 day of July, 2023.

[Signature]
Notary Public in and for
The State of Texas
Debra Meers
Notary's Printed Name

7-31-2024
My Commission Expires



CITY OF ARLINGTON, TEXAS

By: Trey Yelverton
Trey Yelverton, City Manager

ATTEST:

Alex Busken
Alex Busken, City Secretary

APPROVED AS TO FORM:

Molly Shortall
Molly Shortall, City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 12th day of July, 2023.

11/27/25
My Commission Expires

Donna S. King
Notary Public in and for
The State of Texas
Donna S. King
Notary's Printed Name

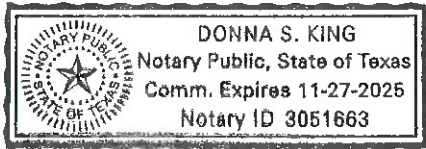
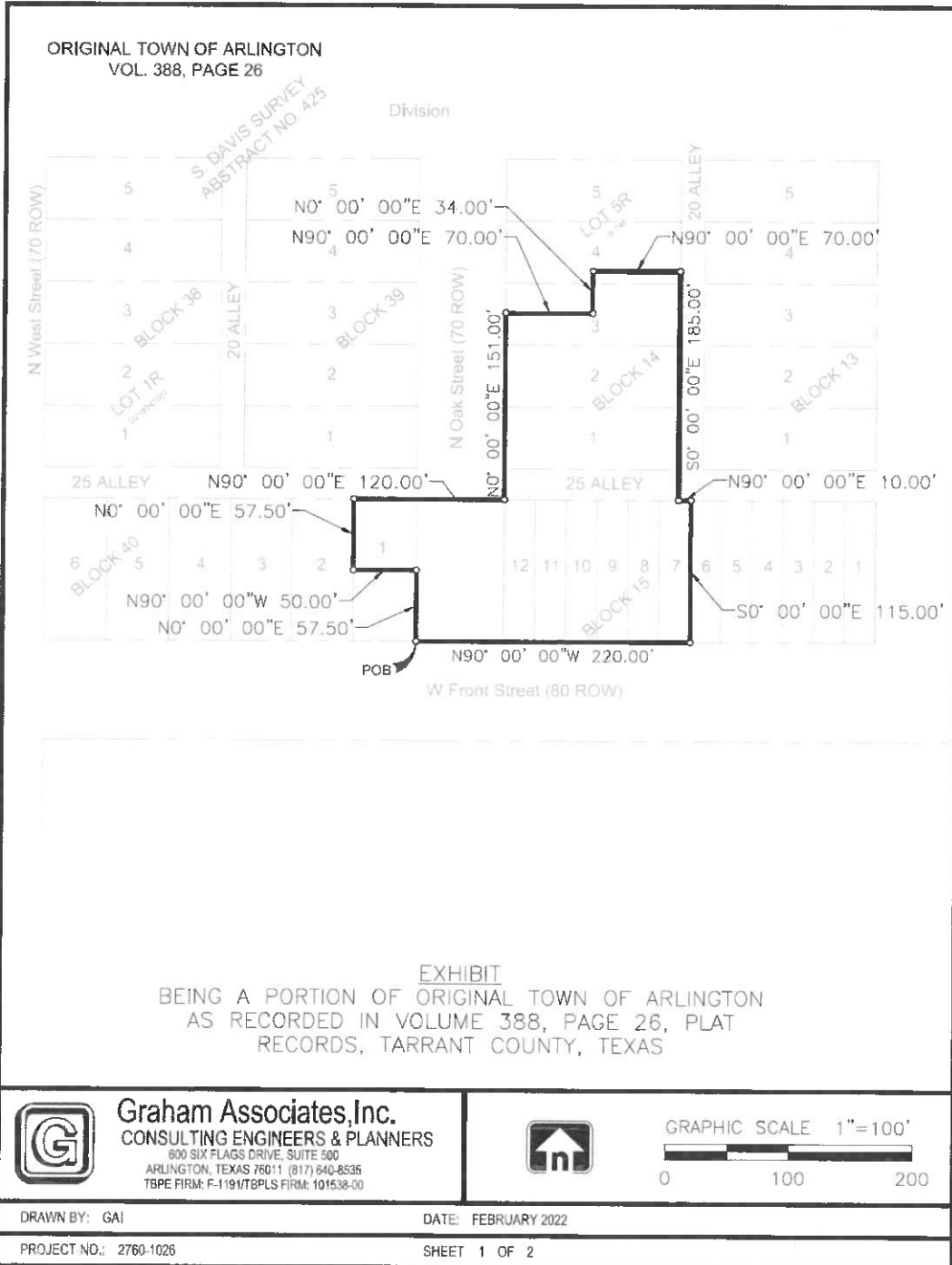


EXHIBIT "A"

Premises



Being a 1.187 acre tract of land situated in the S. Davis Survey, Abstract No. 425, and being a portion of Lot 1, Block 40, all of Lots 7 through 12, Block 15, all of Lots 1 and 2 and a portion of Lots 3 and 4, Block 14, and a portion of a 25 foot public alley (having a 25 foot public right-of-way), and a portion of North Oak Street (having a 70 foot public right-of-way), according to the map of the Original Town of Arlington Addition, as recorded in Volume 388, Page 26, Plat Records, Tarrant County, Texas and being more particularly described as follows:

BEGINNING at the southeast corner of Lot 1, Block 40, of said Original Town of Arlington Addition, and being in the west line of said North Oak Street and the North line of West Front Street (80 foot right-of-way);

THENCE North 00°00'00" East, along said west right-of-way line and along the east line of said Lot 1, being a common line, a distance of 57.50 feet, to a point;

THENCE North 90°00'00" West, leaving said common line, a distance of 50.00 feet to a point being in the west line of said Lot 1 and being in the east line of Lot 2, being a common line;

THENCE North 00°00'00" East, along said common line, a distance of 57.50 feet to the northwest corner of said Lot 1, and the northeast corner of said Lot 2, and also being in the South line of a 25 foot public alley;

THENCE North 90°00'00" East, along the south right-of-way line of said alley and across North Oak Street (70 foot right-of-way), a distance of 120.00 feet to the Northwest corner of Lot 12, Block 15, of said Original Town of Arlington Addition, said point being in the East line of said North Oak Street and in the South line of a 25 foot public alley;

THENCE North 00°00'00" East along the east right-of-way line of said North Oak Street, a distance of 151.00 feet to the Southwest corner of Lot 5R, Block 14, Original Town of Arlington Addition, as recorded in Cabinet B, Slide 746, Plat Records, Tarrant County, Texas;

THENCE North 90°00'00" East, along the south line of said Lot 5R, a distance of 70.00 feet;

THENCE North 00°00'00" East, continuing along said south line, a distance of 34.00 feet;

THENCE North 90°00'00" East, a distance of 70.00 feet to the Southeast corner of said Lot 5R and being in the West line of a 20 foot public alley;

THENCE South 00°00'00" East, leaving said south line, along the West line of said alley and passing at a distance of 160.00 feet the southeast corner of Lot 1, Block 14, of said Original Town of Arlington Addition, a total distance of 185.00 feet to a point in the north line of Lot 7, Block 15, of said Original Town of Arlington Addition and being in the South line of a 25 foot public alley;

THENCE North 90°00'00" East, along the south right-of-way line of said 25 foot public alley, a distance of 10.00 feet to the Northwest corner of Lot 6, Block 15, of said Original Town of Arlington Addition;

THENCE South 00°00'00" East, along the West line of said Lot 6, Block 15, a distance of 115.00 feet to the Southwest corner of said Lot 6, Block 15 and being in the north right-of-way line of said West Front Street;

THENCE North 90°00'00" West, along the north right-of-way line of said West Front Street, a distance of 220.00 feet to the **POINT OF BEGINNING** and containing 51,695 square feet, 1.187 acres of land, more or less.

Basis of Bearings: Original Town of Arlington Addition, Volume 388, Page 26, Plat Records, Tarrant County, Texas, Cardinal Directions Assumed.

