

PUBLIC INFRASTRUCTURE EASEMENT ACQUISITION AGREEMENT

THIS AGREEMENT is made and entered into as of the effective date as hereinafter provided, by and between the **CITY OF PLANO, TEXAS**, a home rule municipal corporation ("City") and **PLANO MALL OWNER LP**, a Delaware limited partnership ("Developer").

WHEREAS, the Developer is the owner of certain real property located between K Avenue and Des Moines Drive north of Spring Creek Parkway (the "Property"), located in the City of Plano, Collin County, Texas; and

WHEREAS, the Property was developed as the Plano Market Square Mall, and is proposed to be redeveloped by the Developer as a mixed-use center, **ASSEMBLY PARK** as depicted in Exhibit "A" (the "Project" or the "Private Improvements"); and

WHEREAS, as a part of the development process for the Project, the Developer proposes to construct public infrastructure facilities on the Property (the "Facilities") and convey easements containing the Facilities to the City through the final plat, substantially as described in Exhibit "B" attached hereto (the "Improved Easements"); and

WHEREAS, pursuant to Bond Proposition Number 4 approved by the voters in 2013, the City may utilize bond funds for construction, improvement, renovation and rehabilitation of public infrastructure and improvements within the City related to revitalization of existing commercial facilities; and

WHEREAS, the City agrees to purchase the Improved Easements to support the Project's revitalization at the time of final plat, so long as the Developer has either substantially completed the construction of the Project, including but not limited to the Facilities, or the Developer has completed construction of the Facilities and has provided a performance bond equal to the cost of the construction of the remainder of the Project that remains unconstructed at the time of the final plat; and

WHEREAS, the City and the Developer have entered into this Agreement to set forth the terms and conditions for the purchase of the Improved Easements.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I. PURCHASE OF EASEMENTS

1.01. Purchase Price and Conditions of Payment

The City will pay the developer the purchase price of Two Million Three Hundred Thousand Dollars (\$2,300,000.00) for the Improved Easements when the last of the following has occurred:

- 1) construction of the Facilities; and
- 2) the Facilities have been accepted by the City as described in Section 1.02 below; and
- 3) the Project has been substantially completed as determined by the Director of Special Projects; or
- 4) a performance bond ensuring the construction of the remainder of the Project has been accepted by the City; and
- 5) the Improved Easements have been conveyed to the City by final plat.

1.02. Acceptance of the Facilities

The Developer must construct the Facilities. The Director of Engineering shall accept the Facilities by a formal acceptance letter once the construction of the Facilities has been completed to the satisfaction of the Director. The Facilities must be accepted by the City before the final plat for the Project is placed on the agenda for review by the City Planning & Zoning Commission.

1.03. Performance Bond

The Developer may complete the construction of the Private Improvements prior to the final plat review by the City Planning & Zoning Commission. If the construction of the Private Improvements is complete and has been approved by the Director of Special Projects in writing, then the City does not require posting of a performance bond.

If, at such time that the Developer requests approval of the final plat, the Developer has not completed the Private Improvements, the Developer must then provide a performance bond in the penal sum of one hundred percent (100%) of the cost to complete the Project. The bond must be posted before the final plat is placed on the agenda for review by the City Planning & Zoning Commission. The cost to complete the Project shall be determined by the Director of Special Projects based

upon his review of the Developer's construction contracts, or, if the Director of Special Projects, in his sole discretion, determines that the construction contracts are not adequate for determining the remaining costs for construction or the developer fails to timely provide the construction contracts for review, the Director of Special Projects may ask the Director of Engineering to prepare an Engineer's Estimate of remaining costs and the Engineer's Estimate shall be the penal sum of the required performance bond.

In accordance with the foregoing, should the Developer provide the performance bond to the City, and should the Private Improvements thereafter not be substantially completed, the City shall have the right to draw upon the performance bond. The bond shall be in form and substance identical to the bond forms attached hereto as Exhibit "C" and made a part by reference (the "Performance Bond"), unless changes are approved in writing by the City Attorney or her designee. The Performance Bond shall be signed by a Corporate Surety or Sureties authorized to do business in the State of Texas, and shall be signed by the Developer as principal. The City shall be named as obligee in the Performance Bond. A power of attorney shall be attached to the Performance Bond evidencing that the agent signing the Performance Bond has authority to sign the Performance Bond on behalf of the Surety.

1.04. Warranty and Remedy of Defects

Developer expressly warrants that the Facilities shall be constructed in accordance with all City requirements and free from all defects. Developer shall indemnify the City from all expenses and liability in connection with such defects. This warranty and indemnity shall extend for a period of one (1) year after the acceptance of the Facilities by the Director of Engineering as described in Section 1.03 above. Thereafter, Developer shall have no obligation whatsoever for any expenses, costs, or liability whatsoever in connection with the Facilities and their construction.

For a period of (1) year after the acceptance of the public improvements by the Director of Engineering as described in Section 1.03 above, the Developer shall remedy and repair all defects in the public improvements within thirty (30) days of written notice to Developer from the City that the defect exists. If the defect is of the type that will require additional time in which to remedy, the Developer shall specify in writing to the City within said thirty (30) day period the particular reasons why such repairs cannot be completed in said thirty (30) day period. If, in the City's reasonable opinion, such reasons for delay are justified, the City may grant the Developer additional time. However, in such event the Developer must have commenced the repair work within said thirty (30) day period and continue diligently to complete the repair work. If the City grants additional time, such extension shall be in writing and shall be for a specified period of time. Following the one (1) year period described herein, the City shall be obligated to maintain and repair the

Facilities at its sole expense and in accordance with Section 1.06.

1.05. Failure of Developer to Remedy Defect or Honor Warranty

If the Developer fails to meet its obligations in Section 1.04 above, it shall be considered in default and the City, at its option, may:

- (a) Contract with another party for the repair work; or
- (b) Complete the repair work with its own crews.

Additionally, the Developer shall be liable to the City for reimbursement of all actual out-of-pocket costs expended by the City as a direct result of completing the repair work.

1.06 Maintenance

Following the one (1) year period described in Section 1.04 above, the City agrees to maintain and repair, at the City's sole expense, the Facilities.

ARTICLE II. INDEMNITY

2.01. Indemnity

The Developer agrees to defend, indemnify and hold the City and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death) property damage or other harm or violations for which recovery of damages, fines or penalties is sought, suffered by any person or persons, that may arise out of or be occasioned by developer's breach of any of the terms or provisions of this contract, violations of law, or by any negligent, grossly negligent, intentional, or strictly liable act or omission of the Developer, its officers, agents, employees, invitees, contractors, subcontractors or sub-subcontractors and their respective officers, agents, or representatives, or any other persons or entities for which the Developer is legally responsible, in the performance of this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of the City, and its officers, agents, or employees. The City does not waive any governmental immunity or other defenses available to it under Texas or Federal Law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Developer at its own expense is expressly required to defend City against all such claims. City reserves the right to provide a portion or all of its own defense, however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Developer's obligation to

defend City or as a waiver of Developer's obligation to indemnify City pursuant to this agreement. Developer shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this agreement. If Developer fails to retain counsel within the required time period, City shall have the right to retain defense counsel on its own behalf and Developer shall be liable for all actual, reasonable costs incurred by the City in doing so.

Developer does hereby agree to waive all claims against, release, and hold the City and its respective officials, officers, agents, and employees harmless in both their public and private capacities, from any and all liability, claims, suits, demands, disputes, challenges, damages or attorney fees, including all expenses of litigation or settlement, arising out of an exaction claim pursuant to the obligations, duties or terms of this Agreement, including but not limited to any matters arising out of Section 212.904 of the Local Government Code or Section 1.12 of the City of Plano Subdivision Ordinance.

2.02. Insurance

All contractors or subcontractors performing any portion of the work to construct or complete the Facilities must meet the insurance requirements described in Exhibit "D".

ARTICLE III. ENVIRONMENTAL MATTERS

3.01. Environmental Matters - Disclosure

Developer agrees to disclose to City, prior to the final inspection provided for in paragraph 1.02 above, any and all information it may have regarding the presence of any hazardous materials on, in or under the Property. As used in this agreement, "hazardous materials," means any "hazardous substance," "pollutant or contaminant," "petroleum" (or any fraction thereof), and natural gas liquids," as those terms are defined or used in Section 101 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and any other substances regulated or subject to guidance from governmental entities because of their actual or potential effect on public health and the environment, including without limitation: PCBs, lead paint, asbestos, formaldehyde, radon and mold (in toxic quantities).

Developer also certifies that, to the best of Developer's actual knowledge, it has complied and is in compliance with all applicable environmental laws and there are no proceedings, actions, or claims relating to hazardous materials or conditions on the Property threatened by any governmental entity or third party (including, without limitation, any claims relating to the presence of, as well as the release or

management of hazardous materials on the Property).

ARTICLE IV. DEFAULT AND REMEDIES

4.01. Events of Default

The following shall be considered as events of default, in each case to the extent not cured within five (5) business days following written notice thereof from the City:

- (a) The Developer has failed to construct the Private Improvements or the Performance Bond in accordance with this Agreement before approval of the final plat.
- (b) The Developer has been declared insolvent.
- (c) A Receiver has been appointed to handle the affairs or assets of the Developer.
- (d) The filing of a voluntary or involuntary petition in bankruptcy by or against the Developer.
- (e) The commencement of a foreclosure proceeding of a lien against the Property, or its conveyance in lieu of foreclosure.
- (f) The Developer's failure to cure a defect within the cure period provided in this Agreement, as the same may be extended in accordance with this Agreement.
- (g) The failure of the contractor and any subcontractor who actually performs construction work on the Facilities to maintain insurance as required by Section 2.02 of this Agreement.
- (h) The failure of Developer to comply with any other covenant or promise contained in the Agreement.

4.02. Specific Remedy

In the event the City files an action to enforce the terms of this Agreement, including without limitation, a court action or claim in bankruptcy court, the City will be entitled to its actual court costs and reasonable attorneys' fees.

4.03. Remedies Cumulative

The remedies of the City provided in this Agreement shall be construed to be cumulative and nonexclusive. The City shall also be entitled to exercise all other rights and remedies that are available at law and in equity.

ARTICLE V. MISCELLANEOUS PROVISIONS

5.01. Entire Agreement

This Agreement contains the entire agreement between the City and the Developer, and cannot be varied except by written agreement executed by the parties hereto. This Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties, except as allowed in Section 1.04.

5.02. Notices

Unless instructed otherwise in writing, Developer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano, Texas
Attn: Peter Braster, Director of Special Projects
P.O. Box 860358
Plano, TX 75086-0358

City agrees that all notices or communications to Developer permitted or required under this Agreement shall be addressed to Developer at the following address:

Plano Mall Owner, LP
c/o Triten Real Estate Partners
Scott Arnoldy
3657 Briarpark Drive, Suite 300
Houston, TX 77042

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

5.03. Nonwaiver

No waiver of the City's rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the City. No delay or omission in the exercise of any right or remedy accruing to the City upon a breach of this Agreement by the Developer or its Sureties will impair its right or remedy or be construed as a waiver for any such breach theretofore or thereafter occurring. The waiver by the City of any breach of any term, covenant or condition shall not be deemed to be a waiver of any other or subsequent breach of this same or any other term, covenant or

condition herein contained.

No waiver of the Developer's rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the Developer. No delay or omission in the exercise of any right or remedy accruing to the Developer upon a breach of this Agreement by the City will impair its right or remedy or be construed as a waiver for any such breach theretofore or thereafter occurring. The waiver by the Developer of any breach of any term, covenant or condition shall not be deemed to be a waiver of any other or subsequent breach of this same or any other term, covenant or condition herein contained.

5.04. Recitals and Headings

Recitals contained at the beginning of this Agreement shall be construed as a part of this Agreement. However, headings used throughout this Agreement have been used for administrative convenience only and do not constitute matter to be considered in interpreting this Agreement.

5.05. Successors and Assigns, Covenants with the Land, and Subordination by Lienholders

This Agreement shall be binding upon the successors and assigns of the Developer and shall be covenants running with the land described herein as the Property and be binding upon all future owners of the Property. This Agreement or a memorandum thereof, may be recorded in the Land Records of the county in which the Property is located. All existing lienholders shall be required to subordinate their liens to the covenants contained in this Agreement.

Developer must disclose this Agreement to any successors and assigns of the Developer.

5.06. Venue

This Agreement shall be construed under and in accordance with the laws of the State of Texas and is fully performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

5.07. Severability

In case any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.08. No Waiver of Governmental Immunity

Nothing contained in this Agreement shall be construed as a waiver of the City's sovereign or governmental immunity.

5.09. Developer's Authority

The Developer represents and warrants to the City that it has full power and authority to enter into and fulfill the obligations of this Agreement.

5.10. Benefits Inure to the Parties

The benefits of this Agreement inure solely to the City and the Developer, not to any third parties such as subcontractors, laborers, and suppliers.

5.11 Effective Date

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Public Infrastructure Easement Acquisition Agreement as of the Effective Date.

**CITY OF PLANO, TEXAS
A Home Rule Municipal Corporation**

By: _____
Name: **MARK D. ISRAELSON**
Title: City Manager

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

**STATE OF TEXAS §
 §
COUNTY OF COLLIN §**

This instrument was acknowledged before me on the _____ day of _____, 2023, by **MARK D. ISRAELSON , CITY MANAGER** of the **City of Plano, Texas**, a Home Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public in and for the State of Texas

DEVELOPER:

PLANO MALL OWNER, LP,
A Delaware limited partnership

By: Triten Ozone GP, LLC,
A Delaware limited liability company,
Its General Partner

By: _____
Name: _____
Title: _____
Address: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, _____, by _____, _____ of **PLANO MALL OWNER LP** a Delaware Limited Partnership.

Notary Public, State of Texas

EXHIBIT "A"
THE PROJECT

WATERMARK COMMUNITY CHURCH
BLK A, LOT 1
LEVITZ FURNITURE

ZONED: LC
CURRENT USE: CHURCH

BLK A, LOTS 1-10
OAK POINT ESTATES
PHASE 2 (CPL)

ZONED: PH
CURRENT USE:
SINGLE FAMILY RESIDENTIAL

N34°57'45"W
50.00'

AVENUE K

**+/- 180,000 SF of
Creative Office**

**Public
Park/Plaza**

305 Multifamily Units

**Public Kids
Playground**

Public Hike & Bike Trail

EAGLE SPRING CREEK LP
LOT 1, BLOCK A
COURTLAND CORNERS

ZONED: R
CURRENT USE: RETAIL

ROSEBRIAR SPRING CREEK LP
BLK A, LOT 3 (REPLAT)
LAKESIDE MARKET PHASE 1 (CPL)

ZONED: PD-447 | R/MF-2
CURRENT USE: BANK, RETAIL

**+/- 16,500 SF of
Creative Retail**

NMCA LLC
BLK 1, LOT 1R
RANEY ADDITION (CPL)

ZONED: PD-487 (MF-2)
CURRENT USE:
RECREATIONAL FACILITY,
CAR WASH

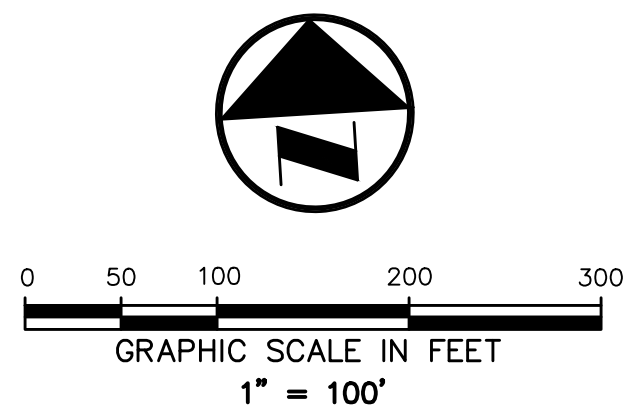
OHAYON YOSSEI
BLK 1, LOT 2R
RANEY ADDITION (CPL)

ZONED: PD-487 (MF-2)
CURRENT USE: RETAIL, EVENT CENTER

SPRING CREEK PARKWAY

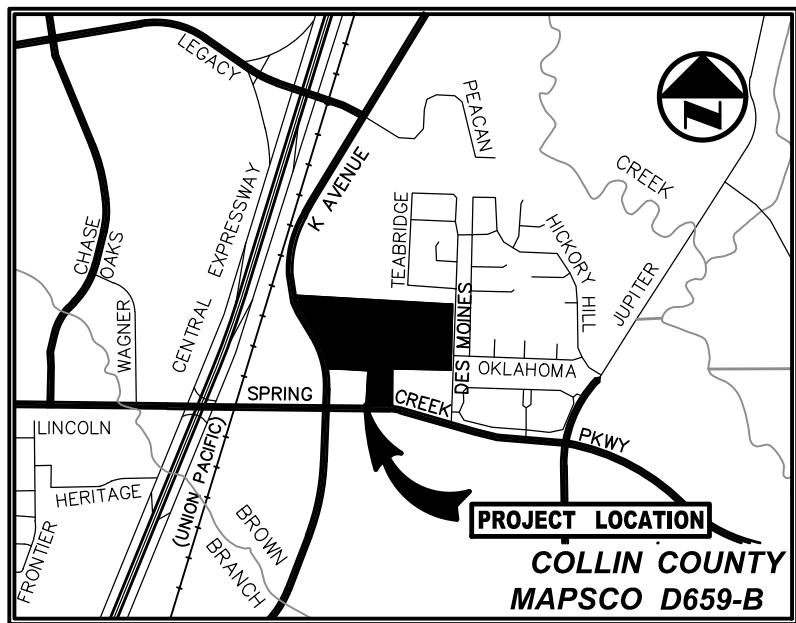
DES MOINES DRIVE

EXHIBIT "B"
THE FACILITIES AND THE EASEMENTS
TOGETHER THE IMPROVED EASEMENTS



CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD
C1	034°20'28"	102.50'	61.43'	31.67'	S 75°40'30" W	60.52'
C2	090°00'42"	10.00'	15.71'	10.00'	S 48°19'46" W	14.14'
C3	062°43'05"	32.00'	35.03'	19.50'	N 43°38'38" E	33.31'
C4	090°00'24"	10.00'	15.71'	10.00'	N 41°41'11" W	14.14'
C5	034°49'18"	67.50'	41.02'	21.17'	S 75°54'53" W	40.39'
C6	090°00'00"	10.00'	15.71'	10.00'	N 41°40'35" W	14.14'
C7	090°00'00"	10.00'	15.71'	10.00'	N 48°19'25" E	14.14'
C8	090°00'00"	10.00'	15.71'	10.00'	S 41°40'35" E	14.14'
C9	090°00'00"	10.00'	15.71'	10.00'	S 48°19'25" W	14.14'
C10	090°00'42"	20.00'	31.42'	20.00'	N 41°41'01" W	28.29'
C11	090°00'42"	20.00'	31.42'	20.00'	S 48°19'20" W	28.29'
C12	090°00'42"	20.00'	31.42'	20.00'	S 41°41'01" E	28.29'
C13	090°00'42"	10.00'	15.71'	10.00'	N 41°40'14" W	14.14'
C14	090°00'42"	10.00'	15.71'	10.00'	S 48°19'46" W	14.14'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 33°28'28" W	50.00'
L2	S 03°19'20" W	30.00'
L3	N 03°19'20" E	50.00'
L4	S 75°00'14" W	40.06'
L5	N 75°00'13" E	8.90'
L6	N 00°19'54" E	19.94'
L7	N 43°53'09" W	39.26'
L8	S 43°53'09" E	16.84'
L9	S 03°19'25" W	50.00'
L10	S 86°40'35" E	20.00'
L11	S 03°19'25" W	10.00'
L12	N 86°40'35" W	30.00'
L13	N 03°19'25" E	60.00'
L14	S 03°19'25" W	30.00'
L15	N 86°40'35" W	10.00'
L16	N 03°19'25" E	30.00'



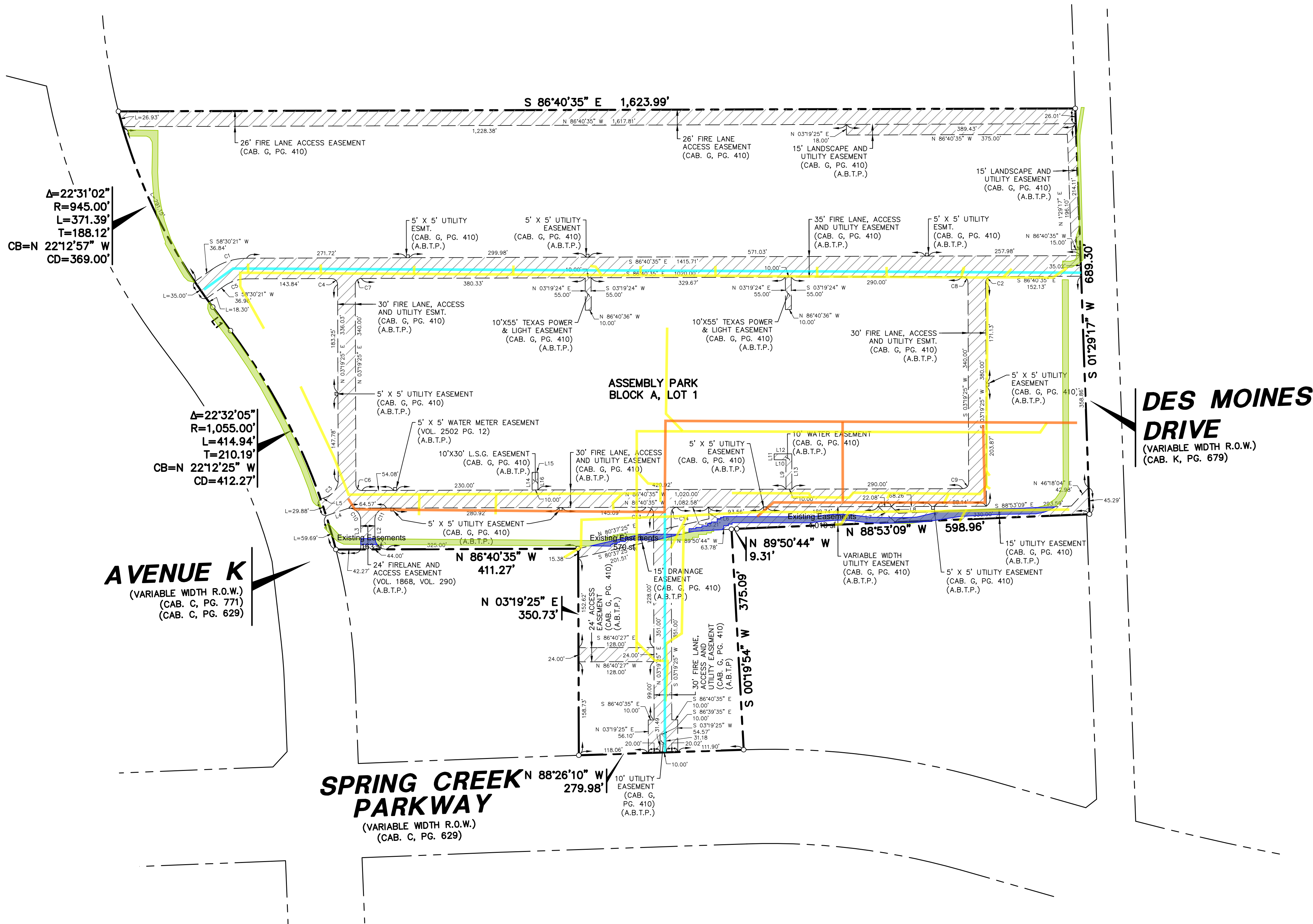
VICINITY MAP
(NOT TO SCALE)

- LEGEND
- ESMT. EASEMENT
 - (C.M.) CONTROLLING MONUMENT
 - (A.B.T.P.) ABANDONED BY THIS PLAT
 - (B.T.P.) BY THIS PLAT
 - PROPERTY LINE
 - EASEMENT LINE
 - NEW EASEMENT LINE

LEGEND

- = STORM SEWER
- = WATER
- = 12" WATER LINE UPGRADE
- = HIKE & BIKE TRAIL
- = EXISTING EASEMENT OVERLAP

THIS SHEET FOR
EASEMENTS BEING
ABANDONED DETAIL ONLY



DES MOINES DRIVE
(VARIABLE WIDTH R.O.W.)
(CAB. K, PG. 679)

AVENUE K
(VARIABLE WIDTH R.O.W.)
(CAB. C, PG. 771)
(CAB. C, PG. 629)

SPRING CREEK PARKWAY
(VARIABLE WIDTH R.O.W.)
(CAB. C, PG. 629)

CITY PROJECT #PR2021-023

PRELIMINARY REPLAT

ASSEMBLY PARK BLOCK A, LOT 1

26.349 ACRES
BEING A REPLAT OF LOT 1, BLOCK A,
OUTLET MALLS OF AMERICA - PLANO
(CABINET G, PAGE 410)
AND BEING SITUATED IN THE
JEREMIAH MUNCY SURVEY, ABSTRACT NO. 621 AND
THE DANIEL ROWLETT SURVEY, ABSTRACT NO. 738
CITY OF PLANO, COLLIN COUNTY, TEXAS

SHEET 3 OF 4

SURVEYOR

PACHECO KOCH CONSULTING ENGINEERS, INC.
7557 RAMBLER ROAD, SUITE 1400
DALLAS, TEXAS 75231
PH: (972) 235-3031
CONTACT: MICHAEL C. CLOVER

OWNER

PLANO MALL OWNER, LP
3657 BRIARPARK DRIVE, STE. 300
HOUSTON, TX 77019
PH: (832) 372-9960
CONTACT: SCOTT ARNOLDY



7557 RAMBLER ROAD SUITE 1400
DALLAS, TX 75231 972.235.3031
TX REG. ENGINEERING FIRM F-469
TX REG. SURVEYING FIRM LS-10008000

DRAWN BY	CHECKED BY	SCALE	DATE	JOB NUMBER
SBP/MCC	MCC	1"=100'	DEC. 2021	3671-20.451

PRELIMINARY REPLAT-ASSEMBLY PARK, BLOCK A, LOT 1

City of Plano - Public Infrastructure & Easement Schedule of Values

Assembly Park Plano

1717 E. Spring Creek Pkwy. Plano, TX 75054

Triten Real Estate Partners

HARVEY BUILDERS

December 30, 2022

	Description	Quantity	Unit	Unit Cost	Total Cost *
	Sitework				
	Earthwork - Haul Off Spoils - Utility/Paving Grading	5,350	CY	\$ 10.00	\$ 55,649
	Site Utilities - Public Storm Drain	1,852	LF	\$ 166.84	\$ 321,401
	Site Utilities - Public Sanitary Sewer	75	LF	\$ 250.57	\$ 19,547
	Site Utilities - Water - New Public Water Line	5,597	LF	\$ 108.28	\$ 630,388
	>6" Hike & Bike Trail	15,016	SF	\$ 7.50	\$ 117,145
	Des Moines Island Work - MP Flex Posts and Striping	57	LF	\$ 77.60	\$ 4,601
	Des Moines Island Work - Demo Existing Paving	9,040	SF	\$ 1.50	\$ 14,105
	Des Moines Island Work - Lime Stabilize Paving	1,004	SY	\$ 8.00	\$ 8,358
	Des Moines Island Work - New 8" Paving	9,427	SF	\$ 10.00	\$ 98,057
	Des Moines Island Work - New Median Curbs	734	LF	\$ 9.00	\$ 6,871
	>4" Sidewalk	3,961	SF	\$ 5.00	\$ 20,601
	ROW Paving Approaches - Demo Existing Paving	5,828	SF	\$ 1.50	\$ 9,093
	ROW Paving Approaches - Lime Stabilize Paving	648	SY	\$ 8.00	\$ 5,389
	ROW Paving Approaches - New 8" Paving	5,828	SF	\$ 10.00	\$ 60,621
	ROW Approach Curbs	371	LF	\$ 9.00	\$ 3,473
	ADA Ramps	19	EA	\$ 450.00	\$ 8,893
	TOTAL VALUE OF SITEWORK				\$ 1,384,193
	Value of Easements				
	Purchase of Utility Easement Rights - Storm	13,939	SF	\$ 9.90	\$ 138,057
	Purchase of Utility Easement Rights - Water	33,398	SF	\$ 9.90	\$ 330,786
	Purchase of Utility Easement Rights - Upsize of Existing Water	30,112	SF	\$ 9.90	\$ 298,240
	Purchase of Hike and Bike Trail Easement Rights	15,016	SF	\$ 9.90	\$ 148,724
	TOTAL VALUE OF EASEMENTS				\$ 915,807
	TOTAL VALUE OF SITEWORK & EASEMENTS			\$	2,300,000
	* Total Cost includes cost of insurance and general contractor fee				

**EXHIBIT “C”
THE PERFORMANCE BOND**

Performance Bond

STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN §

That _____ hereinafter called
"Principal", and _____, a corporation
organized and existing under the laws of the State of _____, and fully
licensed to transact business in the State of Texas, hereinafter called "**Surety**", are held
and firmly bound unto the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation,
hereinafter called "Beneficiary", in the penal sum of
_____ **DOLLARS**

(\$_____) plus fifteen percent (15%) of the stated penal sum as an additional
sum of money representing additional court expenses, attorneys' fees, and liquidated
damages arising out of or connected with the below identified Contract in lawful money
of the United States, to be paid in Collin County, Texas, for the payment of which sum
well and truly to be made, we bind ourselves, our heirs, executors, administrators and
successors, jointly and severally, firmly by these presents.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Plano
City Council approved a Public Infrastructure Easement Acquisition Agreement (the
"Contract") on the 9th day of January, 2023 that requires construction of Private
Improvements described below. The Principal will enter into the Contract with the
Beneficiary, which will be made a part hereof by reference, for the construction of certain
private improvements that are generally described in Exhibit "A" to the Contract.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill
all of the undertakings, covenants, terms, conditions and agreements of said Contract in
accordance with the Contract during the original term thereof and any extension thereof
which may be granted by the Beneficiary, with or without notice to the Surety, and during
the life of any guaranty or warranty required under this Contract, and shall also well and
truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements
of any and all duly authorized modifications of said Contract that may hereafter be made,
notice of which modifications to the Surety being hereby waived; and, if the Principal shall
fully indemnify and save harmless the Beneficiary from all costs and damages which
Beneficiary may suffer by reason of failure to so perform herein and shall fully reimburse
and repay Beneficiary all outlay and expense which the Beneficiary may incur in making
good any default or deficiency, then this obligation shall be void; otherwise, it shall remain
in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

The agent identified below is hereby designated by the Surety herein as the Resident Agent in Collin County or Denton County, Texas, or other Texas location as approved by Beneficiary, to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Texas Insurance Code Section 3503.003.

IN WITNESS WHEREOF, this instrument is executed in counterparts, each one of which shall be deemed an original, this the _____ day of _____, _____.

PRINCIPAL:

Address _____

Tel. No. _____

ATTEST:

BY:

TITLE:

SURETY:

Address _____

Tel. No. _____

ATTEST:

BY:

TITLE:

The Resident Agent of the Surety in Collin County or Denton County, Texas, or other Texas location as approved by Beneficiary, for delivery of notice and service of process is:

NAME:

STREET ADDRESS:

CITY, STATE, ZIP:

For additional information on the above named Surety company you may contact the Texas Department of Insurance at (800)578-4677.

EXHIBIT "D"

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

<u>Coverage Type & Requirement</u>		<u>Required Value</u>
Contractor's Minimum Insurance Requirements:		
(A)	Workers Compensation	Statutory Limits
(B)	Employer's Liability	
	Each Accident	\$1,000,000
	Disease Policy Limit	\$1,000,000
	Disease Each Employee	\$1,000,000
(C)	General Liability Insurance, including contractual liability	
	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
	Products-Completed Ops/Aggregate	\$2,000,000
	Personal & Advertising Injury	\$1,000,000
	Fire Damage	\$100,000
	Medical Expense	\$10,000
Stipulate that such insurance is primary and will not seek contribution from any other insurance carried by, or for the benefit of the additional insureds, including all applicable deductibles or retentions.		
(D)	Excess Liability – Umbrella Form	
	Each Occurrence	\$5,000,000
	Aggregate	\$5,000,000
(E)	Automobile Liability Insurance	
	Must include, owned, non-owned and hired autos	
	Combine Single Limit	\$1,000,000

Stipulate that such insurance is primary and is not contributing with, any other insurance carried by, or for the benefit of the additional insureds.

Additional Insureds:

Plano Mall Owner, LP, Zion Bancorporation NA dba Amegy Bank, TREP MGMT, CO. LLC, including all managers, members, partnerships and partners thereunder, corporations, trusts, joint ventures, affiliates, employees, lenders, capital providers, and/or agents thereof as their interest may appear for services provided on GL, Auto and Excess.

Waiver of Subrogation:

All policies evidencing the insurance coverage required above shall contain a waiver of subrogation in favor of Plano Mall Owner, LP, Zion Bancorporation NA dba Amegy Bank, TREP MGMT, CO., LLC, including all managers, members, partnerships and partners thereunder, corporations, trusts, joint ventures, affiliates, employees, lenders, capital providers, and/or agents thereof as their interest may appear for services provided.

Certificate Holder:

Plano Mall Owner, LP

c/o TREP MGMT, CO. LLC
3657 Briarpark Drive, Suite 300
Houston, Texas 77042

****All insurance carriers must have a minimum rating of A- and a minimum financial size of VII****