

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “**MOU**”) is made and entered into as of November ___, 2024, by and between the CITY OF PFLUGERVILLE (the “**City**”), a Texas home-rule municipality, and GRIFFIN/SWINERTON, LLC, (“**Developer**”), a Delaware limited liability company.

RECITALS

A. On November 28, 2023, City and Developer entered into a Pre-Development Agreement (the “**PDA**”) for the performance of certain Preliminary Development Activities (as defined therein) related to the Downtown East Project, including Developer providing a warm gray shell of not more than 10,500 gross square feet of retail space within the new Multigenerational Recreation Center (“**Recreation Center**”) for use as private retail, cafe and/or restaurant facilities (the “**Recreation Center Retail**”).

B. The PDA contemplated that Developer or an affiliate of the Developer would, with its own at-risk private capital, fund the development and construction of the Recreation Center Retail, estimated to cost at least \$2,500,000, and be responsible for (1) leasing and management/operations of the Recreation Center Retail, including the cost of related tenant improvements and leasing commissions, and (2) managing, or causing to be managed by a third party, the “**Phase One Retail**” consisting of the Recreation Center Retail and the City-owned cafe/retail component contained within the City Hall.

C. City and Developer are concurrently entering into a Ground Lease Agreement, License Agreement, and a Purchase and Sale Agreement for the Civil Work (as defined in the Ground Lease Agreement) and intend to enter into separate Purchase and Sale Agreements for the City Hall and Recreation Center after Developer completes the Preliminary Development Activities for the City Hall and Recreation Center.

D. City and Developer desire to enter into this MOU to set forth the basic terms and conditions relating to the Phase One Retail and Developer Initial Contribution to be included in and serve as the foundation for the remaining terms to be included in the Purchase and Sale Agreement for the Recreation Center relating to the Phase One Retail and Developer Initial Contribution.

NOW THEREFORE, in consideration of the mutual covenants, agreements and promises contained in this MOU, the receipt and adequacy of which are hereby acknowledged, City and Developer agree as follows:

AGREEMENT

1. **Project Overview.** Developer will create a project-specific limited liability company (“**Retail Owner**”) to be a party (in addition to City and Developer) to the Purchase and Sale Agreement for the Recreation Center. City, Developer, and Retail Owner are collectively referred to as the “**Parties.**” Retail Owner will have all of Developer’s rights and will be solely responsible for all of Developer’s obligations related to the Phase One Retail.

(a) **Project Site:** City owned approximately 29-acres at NW corner of E. Pecan Street and FM 685 in the City of Pflugerville, Texas.

(b) Downtown East Phase 1 Improvements:

- (i) *Land Development:* The Downtown East project is on an approximately 29 acre City-owned site (“**Downtown East Subdivision**”), and includes the extension of Main Street and other internal roadways, utilities, plaza, parking, and preparation of development pads. Extension of Main Street will also include a bridge, roadway improvements, trail connection, and surface parking on five parcels assembled (3 of 5) and to-be-assembled (2 of 5) by City west of the Downtown East Subdivision.
- (ii) *City Facilities:* Developer to provide turnkey build-to-suit of a new City Hall and Recreation Center (and related infrastructure) to be owned and operated by the City as further set forth in the respective Purchase and Sale Agreements to be entered into by the Parties.
- (iii) *Phase One Retail:* approximately 10,500 GSF of ground floor retail as part of the mixed-use Recreation Center building (“**Recreation Center Retail**”) and 1,275 GSF of ground floor retail in City Hall (“**City Hall Cafe**”).

2. **Summary of Developer Obligations for Phase One Retail.**

(a) Developer Initial Contribution: Retail Owner shall, with its own at-risk private capital, fund the development and construction of the Recreation Center Retail, estimated to cost at least \$2,500,000 (“**Developer Initial Contribution**”). Retail Owner shall place in escrow (or make provisions reasonably acceptable to City) for the Developer Initial Contribution concurrently with the execution of the Purchase and Sale Agreement relating to the Recreation Center. Neither Developer nor Retail Owner will have any obligation to fund the development and construction of the City Hall Café, which will be funded by City as part of the entire City Hall project pursuant to the terms of the City Hall Purchase and Sale Agreement.

(b) Leasing and Management of Recreation Center Retail: Retail Owner is responsible for leasing and management/operations of the Recreation Center Retail, including the cost of related tenant improvements and leasing commissions.

(c) Management of Phase One Retail: Retail Owner also shall manage, or cause to be managed by a third party, the Phase One Retail inclusive of the City Hall Café with leasing of same by City (or others as determined by the City). City will be responsible for costs of construction of the City Hall Café and for leasing the City Hall Café, including the cost of related tenant improvements and leasing commissions. Time and termination of Retail Owner’s management obligations of the City Hall Café to be negotiated. Retail Owner intends to use same third-party management company to manage both Recreation Center Retail and City Hall Café; City to pay equitable portion of management fees concerning City Hall Café.

3. **Conditions Precedent.** The following, each being a condition precedent, must be completed by City and agreed to by Retail Owner (such consent not to be unreasonably denied)

before Retail Owner is obligated to fund the Developer Initial Contribution or undertake any other obligations related to the Phase One Retail:

- (a) PSA for Recreation Center: A Purchase and Sale Agreement for the Recreation Center approved by City and executed by the Parties;
- (b) Commercial Condominium Structure with Junior CC&Rs: Creation of a Commercial Condominium Structure with Junior CC&Rs;
- (c) Parking Agreement or Master CC&Rs: Execution of a parking agreement and/or Master CC&Rs ensuring Recreation Center Retail parking as set forth herein;
- (d) Acquisition of Off-Site Parcels: City shall have closed on the acquisition of the Off-Site Parcels (defined below); and
- (e) Competing Retail Agreement: Execution of a Competing Retail Agreement (defined below) and/or Master CC&Rs with respect to the Competing Retail Restrictions.

4. **Parking.**

(a) Parcel 1: Current plans show Parcel 1 as a surface parking lot estimated to be 131 parking stalls. City is also exploring an option to build an approximately 500-stall parking structure on Parcel 1. If Parcel 1 is built as a surface parking lot, all parking in Parcel 1 shall be made available to Retail Owner on an exclusive and reserved basis, with the exception of ADA parking. If Parcel 1 is built as a parking structure, City will provide free parking to Recreation Center Retail customers in the parking structure. If Parcel 1 is built as a parking structure, City will reserve all ground floor parking for Recreation Center Retail customers and ADA parking.

(b) Parcel 3: If Parcel 1 is built as a surface parking lot, then Retail Owner shall have the right to utilize Parcel 3 for valet parking on days and times to be agreed by the parties. (See Maps attached as **Exhibit A** for depiction of parcels with surface parking and parking structure).

(c) Parking Costs: Parking, whether surface parking or parking structure, shall be made available at no cost to Retail Owner with the exception of the Retail Owner's proportionate share of market rate CAM charges (e.g., janitorial, utilities, landscaping, etc. and routine capital expenditures). City and Retail Owner shall enter into a separate Parking Agreement, pursuant to which at all times during existence of the Retail Unit (defined below), sufficient parking shall be provided for the Recreation Center Retail.

5. **Commercial Condominium Structure.**

(a) Recreation Site Subdivided: The Recreation Center building will be subdivided into two commercial condominium ownership units per the Texas Uniform Condominium Act (TUCA), consisting of the following two condominium units:

- (i) **“Recreation Center Unit”** consisting of all of the land (Parcel 4) for the Recreation Center and Recreation Center building, excluding only the Retail Unit; and
- (ii) **“Retail Unit”** consisting of the Recreation Center Retail.

(b) Ownership; Junior CC&Rs: City will own the Recreation Center Unit and Retail Owner will own the Retail Unit. The Recreation Center will be governed by a set of covenants, conditions & restrictions (“**CC&Rs**”) (the “**Junior CC&Rs**”).

(c) Master CC&Rs: There will be a separate set of CC&Rs (the “**Master CC&Rs**”) that govern the entire Downtown East project.

(d) Payment for Retail Condo: Retail Owner’s funding of costs to develop the Recreation Center Retail will satisfy its obligation to gain title to the Retail Unit. The costs to develop the Recreation Center Retail will not include a land payment.

6. **Conveyance**. Upon (i) the satisfaction of the conditions precedent set forth in Paragraph 3 above, (ii) the funding of the Developer Initial Contribution into escrow pursuant to a mutually agreeable escrow agreement, and (iii) substantial completion of the Recreation Center, the City will convey the Retail Unit to the Retail Owner pursuant to a standard special warranty deed (the “**Deed**”). The Deed shall not contain any reversionary interests of the City in and to the Retail Unit; however, the Deed will reserve unto the City a right of first offer to acquire the Retail Unit, (the “**ROFO**”), whereby the Retail Owner and all subsequent owners of the Retail Unit shall be required to offer the Retail Unit to the City for sale prior to offering the Retail Unit for sale to any other person. The precise terms of the ROFO shall be negotiated between the Parties in good faith.

7. **Retail Owner Exit.**

(a) Sale to Third Party & Profit-Sharing with City: The Retail Owner shall not sell or offer the Retail Unit for sale to a third party without first offering the Retail Unit for sale to the City pursuant to the terms of the ROFO. Should the City elect not to accept the terms of the ROFO, and the Retail Owner subsequently elects to sell the Retail Unit to a buyer other than the City, the Retail Owner will agree to distribute the net proceeds from the sale (after paying brokerage fees and closing costs) as follows:

- (i) Retail Owner shall first receive the return of all invested capital and all interest thereon at an annual rate of 8% compounded from date of equity infusion through the date of close of escrow pertaining to the sale.
- (ii) After the Retail Owner shall have received its 8% return as noted above, the City shall receive the next \$600,000, representing the City's base investment in parking infrastructure.
- (iii) Thereafter, All net distributable proceeds remaining shall be apportioned as follows:
 - City: 50%
 - Retail Owner: 50%

(b) Restriction on Transfer: Notwithstanding Subparagraph (a) to the contrary, the Retail Owner shall not be entitled to offer the Retail Unit for sale to an unrelated third-party purchaser, or offer the Retail Unit for sale to the City (ROFO) unless and until 50% of the Retail Unit’s net leasable area has been leased.

8. **Competing Retail Agreement.** City and Retail Owner shall execute an agreement regarding competing retail restrictions in the Downtown East subdivision, whether through a separate stand-alone agreement (the “**Competing Retail Agreement**”) or through the Master CC&Rs, setting forth exclusive retail use rights for Retail Owner (and carried through to its tenants) and/or other such use restrictions, prohibited uses, and non-compete provisions.

9. **City Acquisition of Off-Site Parcels.** City must acquire fee ownership of [DESCRIBE PARCELS] (the “**Off-Site Parcels**”) and, accordingly, obtain all approvals necessary for the construction of the [DESCRIBE ROAD], before Retail Owner is obligated to fund the Developer Initial Contribution or undertake any other obligations related to the Phase One Retail.

10. **Good Faith Negotiations.** The Parties acknowledge and agree that the foregoing terms and conditions collectively highlight the key terms, conditions, and plans for the Phase One Retail as they are known or envisioned by the Parties as of the date of this MOU, and will form the basis of the terms and conditions relating to the Phase One Retail in the Purchase and Sale Agreement for the Recreation Center, and that additional terms and conditions will be negotiated by the Parties. The Parties agree to negotiate such terms in good faith, substantially consistent with the terms and conditions set forth in this MOU.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this MOU as of the day and year first above written.

CITY:

CITY OF PFLUGERVILLE, TEXAS, a Texas home-rule municipality

By: _____
Sereniah Breland, City Manager

DEVELOPER:

GRIFFIN/SWINERTON, LLC, a Delaware limited liability company

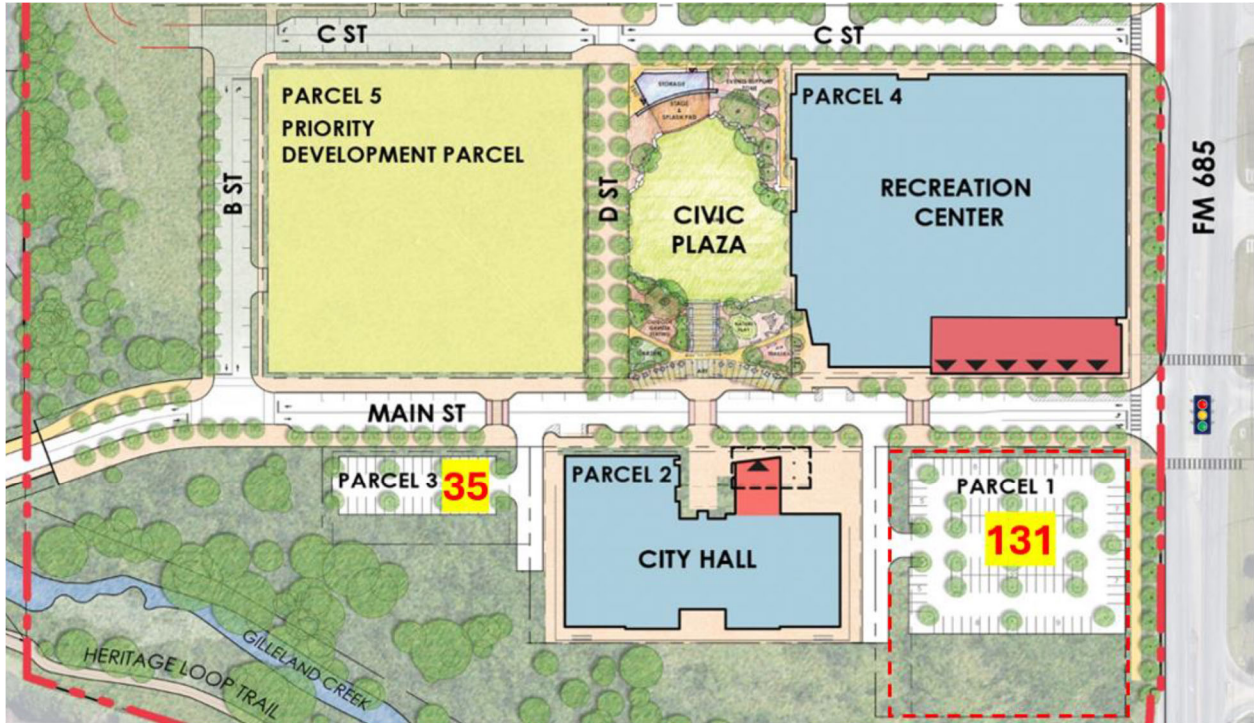
By: _____
Roger Torriero, Principal

By: _____
Korin Crawford, Executive Vice President

EXHIBIT A

Maps of Parcels (with Surface Parking and Parking Structure)

Partial Site Map – Phase 1 Downtown East – Parcel 1 Surface Parking



Partial Site Map – Phase 1 Downtown East –Parcel 1 Parking Structure

