

STATE OF TEXAS §
§ ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
COUNTY OF WILLIAMSON §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the Georgetown Transportation Enhancement Corporation, a Type B sales tax corporation (“GTEC”) and Titan NorthPark35, LLC, a Texas limited liability company (“Company”) (GTEC and Company each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, Company owns or is under contract to purchase approximately 146 acres of land generally located at the intersection of I-35 and Toll Road 130 West, in Georgetown, Texas, further described in Exhibit “A” (as “NP35 Land” containing approx. 36 acres and the “NP110 Land” containing approximately 110 acres (collectively, the “Land”); and

WHEREAS, Company intends to develop on the Land a class A master planned industrial business park to be known as NorthPark35 and construct one or more industrial buildings in one or more phases of development consisting of industrial buildings containing varying square feet of space; and

WHEREAS, Company intends to design and construct the extension of Aviation Drive including the related utilities, in accordance with the Plans and Specifications (the “Project”); and

WHEREAS, Company has completed, and City has approved, the plans and specifications for a portion of Phase One of the Improvements and the Project (“Titan Plans”) and Company is causing the Project Engineer (hereinafter defined), on behalf of the City, to prepare the plans and specifications for the additional portion of Phase One, Phase Two and Phase Three of the Project (“Road Plans”), (the Titan Plans and the Road Plans hereinafter the “Plans and Specifications”); and

WHEREAS, Company intends to make a cumulative Capital Investment (hereinafter defined) under the GEDCO/City Economic Development Agreement, the City Economic Development Agreement and this Agreement of at least Fifteen Million Dollars (\$15,000,000) for the Project, Improvements, and Infrastructure; and

WHEREAS, Company has advised GTEC that a contributing factor that would induce Company to undertake the construction of the Improvements and the Project would be an agreement by GTEC to provide an economic development grant to Company to offset the costs for the design and construction of the roadway portion of the extension of Aviation Drive (hereinafter defined as the “Infrastructure”); and

WHEREAS, GTEC has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Chapter 501-505 of the Texas Local Government Code (the “Act”) authorizes GTEC to provide economic development grants for the creation and retention of primary jobs that are required for the development of manufacturing and industrial facilities and for infrastructure suitable for new or expanded industrial business enterprises; and

WHEREAS, GTEC has determined that the Grant (hereinafter defined) related to the construction of the Infrastructure to be made hereunder are required or suitable to promote the creation and retention of primary jobs that are required for the development of manufacturing and industrial facilities and for infrastructure suitable for new or expanded industrial business enterprises and constitutes a “project”, as that term is defined in the Act; and

WHEREAS, GTEC has determined that providing the Grant to Company in accordance with this Agreement will further the objectives of GTEC, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, Georgetown Economic Development Corporation (“GEDCO”) intends to enter an economic development agreement with Company to provide a grant for the construction of the electric utilities portion of the Project (“GEDCO Economic Development Agreement”); and

WHEREAS, City intends to enter an economic development agreement with Company to provide a grant for the construction of the water utilities portion of the Project (“City Economic Development Agreement”);

NOW THEREFORE, in consideration of the foregoing, and other consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Company’s existence, insolvency, employment of receiver for any part of Company’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Company and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“Capital Investment” shall mean the total capitalized cost incurred and paid by Company for the design and construction of the Project, Infrastructure, and the Improvements.

“City” shall mean the City of Georgetown, Texas.

“City Economic Development Agreement” shall mean that certain incentive agreement by and between the City and Company to provide an economic development grant relating to the construction of the water utilities portion of the Project dated of approximate date herewith.

“Commencement of Construction” shall mean: (A) with respect to the Project that: (i) the Plans and Specifications have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Project; and (ii) all necessary permits for the construction of the Project pursuant to the Plans and Specifications have been issued by all the applicable governmental authorities; and (iii) clearing and/or grading of the Land has commenced; and (B) with respect to the Improvements that: (i) the Titan Plans have received all approvals thereof required by applicable governmental authorities have been obtained for construction of the Improvements; (ii) all necessary permits for the construction of the Improvements pursuant to the Titan Plans have been issued by all the applicable governmental authorities; and (iii) clearing and/or grading of the Land has commenced.

“Company” shall mean Titan NorthPark35, LLC, a Texas limited liability company.

“Completion of Construction” shall mean: (A) with respect to the Project that: (i) substantial completion of the Project, or portion thereof, has occurred in accordance with each Phase One, Phase Two or Phase Three; (ii) the City has conducted the final inspection and accepted the Project, or applicable portion thereof; and (B) with respect to the Improvements, the City has issued a temporary certificate of occupancy for the occupancy of the Improvements.

“Contractor” shall mean a contractor(s) or sub-contractor(s) selected by the Company to construct the Project.

“Effective Date” shall mean the last date of execution hereof as set forth in the signature pages herein below.

“Eligible Costs” shall mean the costs that are incurred and paid by Company for the design and construction of the Infrastructure, including but not limited to hard construction costs, permitting fees, testing fees, and construction management fee not to exceed three and one-half percent (3.5%) but not including interest, costs for right-of-way or financing costs. Eligible Costs shall not include costs reimbursed by GEDCO to Company pursuant to the GEDCO/City Economic Development Agreement.

“Engineering Services” shall mean the engineering services undertaken by the Project Engineer for the Plans and Specifications.

“Expiration Date” shall mean the date the Parties have fully satisfied their respective obligations herein, unless sooner terminated as provided herein.

”Force Majeure” shall mean any of the following events or circumstances: (a) strikes, work stoppages, riots, general area-wide organized labor disputes, lockouts or picketing (legal or

illegal); (b) acts of God, including, without limitation, tornadoes, hurricanes, floods, sinkholes, landslides, earthquakes, epidemics, quarantine and pestilence; (c) adverse weather conditions, including rain, hail, mud and ice; (d) fire, explosions, and other casualties; (e) condemnation or other exercise of the power of eminent domain; (f) acts of a public enemy, acts of war, terrorism, or other acts of public enemy, effects of nuclear radiation, blockades, insurrections, riots, civil disturbances or national or international calamities; (g) unavailability or shortage of materials or labor; (h) governmental laws, regulations or restrictions promulgated after the date of this Agreement, and from which the Project is not exempted due to grandfathering provisions; (i) unusual delays in permitting or other governmental approvals not within the reasonable control of Company; and (j) any other causes of any kind whatsoever that are beyond the reasonable control of Company, the Project Engineer, the Contractor or any of their agents, officers and employees. Force Majeure shall in any event exclude lack of sufficient funds of Company.

“GEDCO” shall mean the Georgetown Economic Development Corporation.

“GEDCO/City Economic Development Agreement” shall mean that certain agreement by and between Company and GEDCO related to the construction of the electric utilities portion of the extension of Aviation Drive, of approximate date herewith.

“GTEC” shall mean Georgetown Transportation Enhancement Corporation.

“Grant” shall mean an economic development grant not to exceed the Maximum Grant Amount to be paid to Company to offset the Eligible Costs incurred and paid by Company for the construction of the Infrastructure, to be paid in installments as set forth herein.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license, and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company with respect to any property or any business owned by Company within the City.

“Improvements” shall mean one or more industrial buildings designed and subsequently constructed on the Land containing an aggregate of no less than 300,000 square feet of space

“Infrastructure” shall mean the design and construction of the roadway portion of the extension of Aviation Drive, as set forth in the Plans and Specification and as approximately described in **Exhibit “B”**.

“Land” shall mean the real property described in **Exhibit “A”**.

“Maximum Grant Amount” shall mean the lesser of: (i) Eligible Costs actually incurred and paid by Company for the Project as verified by GTEC; or (ii) the sum of Eight Million Dollars (\$8,000,000.00), less the amount of the Grant paid to Company by GTEC pursuant to that certain economic development agreement by and between GTEC and Company dated August 18, 2020 for the Plans and Specifications.

“Payment Request” shall mean a written request from Company to GTEC, which request shall include an application for a progress payment of the Grant, a progress report, an itemized statement specifying the Eligible Costs for the Infrastructure that have been incurred to date and supporting copies of invoices from the Contractor and copies of all payments made to Contractor to document the Eligible Costs incurred and paid by Company for the Infrastructure, and such other information, as may reasonably be requested by GTEC evidencing the Eligible Costs incurred and paid by the Company for Infrastructure and evidencing the Capital Investment.

“Phase One” shall mean achievement of Completion of Construction of the portion of the Project from existing Aviation Drive to the corner of the end of Lot 2 being within Phase One, and approximately depicted in **Exhibit “B”**.

“Phase Two” shall mean achievement of fifty percent (50%) of the Completion of Construction of the Project, as determined by the Project Engineer and verified by GTEC, which verification shall not be unreasonably withheld, conditioned or delayed, as approximately depicted in **Exhibit “B”**.

“Phase Three” shall mean one hundred percent (100%) achievement of Completion of Construction of the Improvements and the Project, as determined by the Project Engineer and verified by GTEC, which verification shall not be unreasonably withheld, conditioned or delayed, as approximately depicted in **Exhibit “B”**.

“Plans and Specifications” shall mean the Titan Plans and the Road Plans, prepared by the Project Engineer for the Improvements and the Project, the Road Plans as approved in writing by the City Manager, or designee.

“Prohibited Uses” shall mean adult book or adult video stores; Massage Parlor, however, day spas which offer massages are acceptable; flea markets; the resale of used clothing; fight clubs; recycling centers; slaughterhouses; dairy farms or plants, milk houses, or milking parlors; asphalt or concrete plants; auto recycling or wrecking yards; petroleum refineries; trailer, RV or mobile home parks; electrical substations; sewage treatment plants; cemeteries; or mines.

“Project” shall mean the design and construction of an extension of Aviation Drive, including related utilities to be constructed by Company in accordance with the Plans and Specifications as approximately depicted in **Exhibit “B”**.

“Project Engineer” shall mean the certified professional engineer selected by the Company and approved in writing by the City Manager, or designee, to provide the Engineering Services.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between the City, GEDCO and/or GTEC and Company.

“Zoning” shall mean the ordinance currently in place on the Land as of the Effective Date hereof for the development of the Land and the Improvements.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III Project

3.1 Construction of the Project and Improvements.

(a) Construction Schedule. Company shall, subject to events of Force Majeure, cause Commencement of Construction of Improvements and the Project to occur within six (6) months after the Effective Date, and shall, subject to events of Force Majeure, cause Completion of Construction of the Improvements and the Project to occur within twenty four (24) months after Commencement of Construction of the Project.

(b) Right-of-Way. Company has dedicated to the City its portion of the required right-of-way or easements pursuant to that Plat filed on October 12, 2020 in the Official Public Record of Williamson County, Texas as Document No. 2020124920 for the construction use, maintenance and repair of the Project located on the NP35 Land. Upon acquiring the NP110 Land, Company shall, without additional cost to the City, dedicate by plat or convey by separate instrument, in form reasonably acceptable to the City, any right-of-way or easements necessary for the installation, construction, use, maintenance and repair of the Project thereon (“Onsite Right-of-Way”). The City shall, at its sole cost and expense, subject to events of Force Majeure, no later than one (1) year after the Effective Date acquire or take possession from such other land owners, such rights-of-way and/or easements off-site of the Land necessary for the installation, construction, and operation of the Project for the remainder of Phase One and all of Phase Two and Phase Three, as set forth in the Plans and Specifications (“Off-Site Right-of-Way”). Any delay in completing construction of the Project caused by or due to lack of possession of or rights to Off-Site Right-of-Way shall extend the time periods for Commencement of Construction and/or Completion of Construction set forth herein, on a day-for-day basis.

(c) Submission of Permit Applications. Prior to Commencement of Construction of the Improvements, the Project and the Infrastructure, Company shall make, or cause to be made, application for any necessary permits and approvals that are customarily required by City and any applicable governmental authorities to be issued for the construction of the Improvements, the Project and the Infrastructure.

(d) Company shall comply and cause its Contractor to comply with all local and state laws and regulations regarding the design and construction of the Infrastructure in accordance with the Plans and Specifications, including but not limited to, any applicable requirement relating to payment, performance and maintenance bonds.

(e) Project Inspection. City Engineer, or designee shall have the right to inspect the Infrastructure to determine whether the Infrastructure construction is in accordance with the requirements of Plans and Specifications, this Agreement as well as City standards, ordinances, and regulations pertaining to the construction of public improvements.

(f) Pre-Construction Conference. Prior to Commencement of Construction of the Project and the Infrastructure Company, if required by City, shall cause the Contractor and the Project Engineer to hold a pre-construction conference with the City-designated Engineering Inspector and the applicable private and public utility companies, as necessary.

(i) Bonds. Company shall cause the Contractor to provide payment bonds and performance bonds for the construction of the Project to ensure completion thereof pursuant to Chapter 2253, Texas Government Code, as amended. Company shall cause the Contractor to provide maintenance bonds for the Project as a whole in favor of City in accordance with City requirements and regulations pertaining to maintenance bonds for public improvements.

3.2 Acceptance Procedures. City acceptance of the Infrastructure or portion thereof shall require:

(i) Submittal of executed Company's affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Infrastructure work have been fully paid or otherwise satisfied;

(ii) Submittal of executed Contractor's affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Infrastructure work have been fully paid or otherwise satisfied;

(iii) Submittal of Consent of Surety;

(iv) Submittal of one set of reproducible As-Built Record Drawings for the Project;

(v) Delivery of a bill of sale conveying the Project, or portion thereof to the City for which the Company has submitted a Payment Request; and

(vi) Delivery of all assignable warranties or assignment of warranties for the Infrastructure, or portion thereof for which Company has submitted a Payment Request.

3.3 Access to Work and Inspections. City, and its representatives, shall have access to the Project work at all times from Commencement of Construction through Completion of Construction. The Company shall take whatever steps reasonably necessary to provide such access when requested. When reasonably requested by the City based on substantiated need for confirmation, the Company shall perform or cause to be performed such testing as may be reasonably necessary or reasonably appropriate to ensure suitability of the jobsite or the Project work's compliance with the Plans and Specifications.

3.4 Indemnification. GTEC SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF COMPANY OR ITS CONTRACTOR PURSUANT TO THIS AGREEMENT. COMPANY HEREBY WAIVES ALL CLAIMS AGAINST GTEC, ITS BOARD, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS “GTEC”) FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE SOLE NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF GTEC. COMPANY DOES HEREBY INDEMNIFY, DEFEND AND SAVE HARMLESS GTEC FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS’ FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM COMPANY’S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY NEGLIGENT OR WILLFUL ACT OR OMISSION ON THE PART OF COMPANY, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE GTEC). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH GTEC AND COMPANY, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO GTEC AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE COMPANY’S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY COMPANY UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

3.5 Project Records and Audits.

(a) Company shall keep, and cause the Contractor to keep, a complete and accurate record to document the performance of the Project work and to expedite any audit that might be conducted by GTEC and/or its authorized representatives. Company shall maintain and cause the Contractor to maintain records sufficient to document that Grant funds provided pursuant to this Agreement were expended only for Eligible Costs that were incurred in accordance with all applicable state and local laws, rules, policies and procedures, and in accordance with this Agreement.

(b) Company shall maintain, and cause the Contractor to maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement; and Company shall make, and cause the Contractor to make such materials available to GTEC for review and inspection during the term of this Agreement and for a period of four (4) years from the date of Completion of Construction of the Project, or until any pending litigation or claims are resolved, whichever is later.

(c) Company shall provide and cause the Contractor, upon not less than 48 hours' prior written notice, to provide GTEC access to all Project records during normal business hours that are applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

3.6 Assignment of Warranties. Company agrees to obtain and assign to the City the assignable warranties from the Contractor and suppliers providing labor and/or materials in connection with the Project. Such warranties shall: (a) be at least standard industry warranties with respect to the Project; and (b) obligate the Contractor and suppliers to repair all defects in the Project for a period of two (2) years following Completion of Construction of the Project.

3.7 Casualty. Risk of loss due to casualty shall be borne by Company until Completion of Construction of the Project. Company shall carry, or cause to be carried as an Eligible Cost, insurance in amounts sufficient to restore any portion of the Project damaged by casualty to the same condition as existed immediately prior to such casualty. Company will, in any event, restore any portion of the Project damaged or destroyed by casualty as part of its obligation to construct the Project and the time granted by the City for restoration shall be commensurate to the extent of the damage or destruction..

3.8 Insurance. Company shall obtain and maintain in full force and effect at its expense and shall require its Contractor to obtain and maintain at their expense the following policies of insurance and coverage:

(a) Commercial General Liability Policy covering bodily injury, death and property damage, including the property of GTEC, its directors, officers, employees and agents insuring against all claims, demands or actions relating to the Project work and services provided pursuant to this Agreement with minimum limits on a per project basis of not less than One Million Dollars (\$1,000,000) combined single limit and Two Million Dollars (\$2,000,000) aggregate, including products and completed operations coverage. This policy shall be primary to any policy or policies carried by or available to GTEC.

(b) Workers' Compensation/Employer's Liability Insurance Policy in full accordance with the statutory requirements of the State of Texas and shall include bodily injury, occupational illness or disease coverage with minimum Employer's Liability limits of not less than \$500,000/\$500,000/\$500,000.

(c) Automobile Liability Insurance Policy covering all operations of Company pursuant to this Agreement involving the use of motor vehicles, including all owned, non-owned

and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability.

(d) Excess Liability Insurance Policy with a limit of not less than Ten Million Dollars (\$10,000,000). Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employer's liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by GTEC and shall be provided on a "following form basis". Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the Contractor's completed work.

(e) Property/Builders Risk Insurance Policy with "all-risk" coverage on the entire Project construction value with replacement cost basis to include the interest of GTEC, Company, the Contractor in the Project work and materials in transit and stored off the Project site destined for incorporation.

(f) Professional Liability Insurance (if applicable) with limit of not less than Two Million Dollars (\$2,000,000) for all negligent acts, errors and omissions by the Project Engineer that arise out of the performance of this Agreement.

(g) Waiver of Subrogation Rights. The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against GTEC.

(h) Additional Insured Status. With the exception of Worker's Compensation Insurance and any Professional Liability Insurance, all insurance required pursuant to this Agreement shall include and name GTEC, its board, officers and employees as additional insureds. The Additional Insured status for GTEC shall remain in force and effect for a minimum of two (2) years following abandonment or completion of the work and services provided pursuant to this Agreement and the termination of this Agreement.

(i) Certificates of Insurance. Certificates of Insurance and policy endorsements for the required insurance shall be delivered to GTEC prior to the commencement of any work or services under this Agreement and annually for a minimum of two (2) years following the Expiration Date or termination of this Agreement, abandonment or completion of Project work. All required policies shall be endorsed to provide GTEC with thirty (30) days advance notice of cancellation or material change in coverage. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements regarding cancellation, non-renewal and/or material changes, the Company shall provide at least thirty (30) days prior written notice to GTEC of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

(j) On every date of renewal of the required insurance policies, Company shall deliver to GTEC (and cause the Contractor to deliver to GTEC a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein. In addition, Company shall, within ten (10) business days after written request, provide GTEC with Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of

such policies). The delivery of the Certificates of Insurance and the policy endorsements (including copies of such insurance policies) to GTEC is a condition precedent to the payment of any amounts due to Company by GTEC.

(k) Carriers. All policies of insurance required to be obtained by Company and its Contractor pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to GTEC and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A-VII” by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by GTEC.

3.9 Zoning. The Parties acknowledge and understand that the Zoning contains provisions that may or do (i) prohibit, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a commercial building otherwise approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of a building, or (ii) establishes a standard for a building product, material, or aesthetic method in the construction, renovation, maintenance, or other alteration of a commercial building that is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building, such that such provision(s) may be void as a matter of law pursuant to Chapter 3000 of the Texas Government Code. Notwithstanding the foregoing, Company agrees to: (i) comply with the Zoning and construct the Improvements in accordance with the materials and elevations required by the Zoning, except that notwithstanding the Zoning the required exterior building materials for all buildings erected on any portion of the Land shall have exterior elevations of concrete, brick, masonry, stone, stucco, metal accents or equivalent finishes; no exterior elevations of any buildings on the Land shall be unfinished; and no metal buildings shall be permitted (the “Required Building Materials”) and (ii) to construct the Improvements as required pursuant to this Agreement. Further, during the term of this Agreement, Company agrees: (i) that the Land and no building erected on the Land shall be used for the Prohibited Uses; and (ii) to use building materials for the Improvements consistent and harmonious with the Required Building Materials and the Zoning, (the Zoning as modified by the Required Building Materials) and as required by this Agreement. The provisions of this Section shall be a covenant running with the Land and are fully binding on the Company and each and every subsequent owner of all or any portion of the Land during, but only during, the term of such Party's ownership thereof (except with respect to defaults that occur during the term of such person's ownership) and shall be binding on all successors and assigns of the Company which acquire any right, title, or interest in or to the Land, or any part thereof.

3.10 Grant.

(a) Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company and Article V hereof, GTEC agrees to provide the Grant to Company to be paid within thirty (30) days after receipt of the Payment Request following the date of

Completion of Construction of each Phase One Phase Two and Phase Three, and final City acceptance of each such Phase of Project not to exceed the Maximum Grant Amount.

(b) First Installment of the Grant. The first installment of the Grant in an amount of the lesser of: (i) ten percent (10%) of the Maximum Grant Amount, or (ii) the amount of the Eligible Costs incurred and paid by Company for the Infrastructure (the “First Installment”) shall be paid by GTEC to Company not later than thirty (30) days after receipt of a Payment Request following the date that Phase One has been achieved as determined the Project Engineer and verified by GTEC, which verification shall not be unreasonably withheld, conditioned or delayed. Company shall submit the Payment Request for the First Installment of the Grant no later than ninety (90) days after completion of Phase One. Failure of the Company to timely submit the Payment Request for the First Installment of the Grant on or before ninety (90) days after Completion of Phase One shall result in forfeiture of the payment of the First Installment of the Grant.

(c) Second Installment of the Grant. The second installment of the Grant in an amount of the lesser of: (i) fifty percent (50%) the Maximum Grant Amount as reduced by the amount of the payment of the First Installment; or (ii) the amount of Eligible Costs incurred and paid by Company for the Infrastructure less the amount reimbursed by the First Installment (the “Second Installment”) shall be paid by GTEC to Company not later than thirty (30) days after receipt of a Payment Request following the date Phase Two has been achieved as determined by the Project Engineer and verified by GTEC, which verification shall not be unreasonably withheld, conditioned or delayed. Company shall submit the Payment Request for the Second Installment of the Grant no later than ninety (90) days after the date Phase Two has been achieved. Failure of the Company to timely submit the Payment Request for the Second Installment of the Grant on or before ninety (90) days after the date Phase Two has been achieved shall result in forfeiture of the payment of the Second Installment of the Grant.

(d) Third Installment of the Grant. The third and final installment of the Grant in amount of the lesser of: (i) the remainder of the Maximum Grant Amount after payment of the First Installment and the Second Installment; or (ii) the amount of the Eligible Costs incurred and paid by Company for the Infrastructure less the amount reimbursed by the First Installment and Second Installment not to exceed the Maximum Grant Amount (the “Third Installment”) shall be paid by GTEC to Company not later than thirty (30) days after receipt of a Payment Request following the date that Phase Three has been achieved as determined by the Project Engineer and verified by GTEC, which verification shall not be unreasonably withheld, conditioned or delayed. Company shall submit the Payment Request for the Third Installment of the Grant no later than ninety (90) days after the date that Phase Three has been achieved. Failure of the Company to timely submit the Payment Request for the Third Installment of the Grant on or before ninety (90) days after the date Phase Three has been achieved shall result in forfeiture of the payment of the Third Installment of the Grant.

(e) In no case shall the cumulative payments of the installments of the Grant for the Infrastructure exceed the Maximum Grant Amount.

(f) Company shall be responsible for payment of all work performed for the Infrastructure in excess of the amount of the Maximum Grant.

(g) GTEC will review each Payment Request and the supporting records and the Project work to determine whether the quantity and quality of the Project work is as represented in the Request for Payment and is as required by the Plans and Specifications.

(h) Company warrants that upon submittal of each Payment Request that all Project work for which the Payment Request is submitted shall be free and clear of liens, claims, security interest or other encumbrances in favor of Company or any other person or entity whatsoever.

(i) No payment of the Grant or any installment thereof, nor any use or occupancy of Project by GTEC and/or City, shall be interpreted to constitute an acceptance of any Project work not constructed in accordance with the Plans and Specifications. Company warrants that upon submittal of a Payment Request that the application for payment, all Project work for which the progress payments has been received from GTEC shall be free and clear of liens, claims, security interest or other encumbrances in favor of Company or any other person or entity whatsoever. Company shall promptly pay, or cause the Contractor to pay, any sub-contractor(s) performing work on the Project and upon request by GTEC provide proof to GTEC that such sub-contractor(s) have been paid.

(j) No payment of the Grant, or installment thereof, nor any use or occupancy of Project by GTEC and/or City, shall be interpreted to constitute an acceptance of any Project work not constructed in strict accordance with the Plans and Specifications.

(k) GTEC may decline to make payment of an installment of the Grant, may withhold funds, and, if necessary, may demand the return of some or all of the amounts of the installments of the Grant previously paid to Company, to protect GTEC and/or City from loss because of:

- (i) Defective Project work not remedied by Company or, in the reasonable opinion of City, not likely to be remedied by the Company;
- (ii) Substantiated claims of third parties against GTEC and/or City or their property with respect to the Project costs related to the construction thereof and such claims arising prior to acceptance of the Project by the City;
- (iii) Failure by Company to pay Contractor or others under contract with Company with respect to the Project in a prompt and proper fashion, excluding such instances of non-payment as allowed pursuant to the terms of contract between Company and Contractor;
- (iv) Evidence that the balance of the Project work cannot be completed in accordance with this Agreement;

- (v) Evidence that the Project work will not be completed in the time set forth in Section 3.1(a), but subject to Force Majeure and any permissible delay set forth in this Agreement;
- (vi) Persistent failure to carry out the Project work in accordance with this Agreement; and
- (vii) Damage to GTEC and/or City or a third party to whom GTEC and/or City is, or may be, liable and that is the responsibility of Company under this Agreement.

3.11 Current Revenue. The Grant made hereunder shall be paid solely from lawful available funds, which have been appropriated by GTEC. Under no circumstances shall the obligations of GTEC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, GTEC shall have no obligation or liability to pay the Grant except as allowed by law.

3.12 Grant Limitations. GTEC shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of the obligations of GTEC under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Article IV

Conditions to Economic Development Grant

The obligation of GTEC to pay the Grant and any installments thereof to Company shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

4.1 Good Standing. As a condition of payment of the Grant, or any installment thereof, Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

4.2 Payment Request. Company shall, as a condition precedent to the payment of the payment of the Grant or any installment thereof, timely provide GTEC with the applicable Payment Request.

4.3 Capital Investment. The cumulative Capital Investment under the GEDCO/City Economic Development Agreement, the City Economic Development Agreement and this Agreement shall be at least Fifteen Million Dollars (\$15,000,000) as of the date of Completion of Construction of the Phase Three. Company shall within thirty (30) days after the Completion of Construction of Phase Three provide GTEC with copies of receipts and other records evidencing the required cumulative Capital Investment and such other records as GTEC may reasonably request.

4.4 Compliance with the UDC. The Land and any improvements constructed thereon shall comply with the UDC standards for non-residential development, as well as design and materials for non-residential development for all building facades.

4.5 Project Construction. Company shall, subject to events of Force Majeure, cause Commencement of Construction of Improvements and the Project to occur within twenty-four (24) months after the Effective Date, and shall, subject to events of Force Majeure, cause Completion of Construction of the Improvements and the Project to occur within thirty-six (36) months after the Commencement of Construction.

4.6 Master Plan. Company shall prepare and submit to the City a *conceptual* master plan for the Land which shall comply with the minimum design standards and other details as required by the Zoning on or before December 31, 2020.

Article V Termination

5.1 This Agreement shall terminate upon any one or more of the following:

- (a) by written agreement of the Parties;
- (b) Expiration Date;
- (c) upon written notice by either Party in the event the other Party (the “Breaching Party”) breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within thirty (30) days after written notice thereof to the Breaching Party;
- (d) upon written notice by GTEC, if Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by GTEC, if any Impositions owed to GTEC, GEDCO and/or City or the State of Texas by Company shall become delinquent after thirty (30) days written notice is delivered pursuant to this Agreement (provided, however, Company retains the right to timely and properly protest and contest any such Impositions); and
- (f) upon written notice by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 In the event this Agreement is terminated by GTEC pursuant to Section 5.1(c), (d), (e), or (f), for an uncured breach by Company, GTEC may withhold such actual costs incurred and such amounts from the Grant for work not completed by Company, or portions of the Project not accepted by GTEC, as determined by the Project Engineer and verified by GTEC, as of the date of termination. In the event the actual costs for Completion of Construction of the remaining Phases of the Project exceed the Maximum Grant Amount, Company shall thereafter be liable for

such excess costs (“Termination Cost”) which Company shall immediately pay to GTEC upon GTEC’s demand, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by GTEC) as its prime or base commercial lending rate, which shall accrue from the date the demand is made until paid in full.

5.3 Termination by Company. In the event this Agreement is terminated by Company pursuant to Section 5.1(c) or (f), for an uncured breach by GTEC, Company's sole remedy shall be to retain the amount of the installments of the Grant previously paid by GTEC to Company as of the date of such termination and Company shall have no further rights or obligations hereunder.

5.4 Offsets. GTEC may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to GTEC, GEDCO, and/or City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether the debt due GTEC, GEDCO, and/or City has been reduced to judgment by a court.

Article VI Miscellaneous

6.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns of the respective Parties. This Agreement may not be assigned without the prior written consent of GTEC, which consent shall not be unreasonably withheld, conditioned or delayed.

6.2 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed among the Parties that the Parties, in satisfying the conditions of this Agreement, have acted independently, and GTEC assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the Parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties.

6.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day received as sent by courier or otherwise hand delivered.

If intended for GTEC, to:

John Marler, President
Georgetown Transportation
Enhancement Corporation
City of Georgetown
300-1 Industrial Avenue
Georgetown, Texas 78626

With a copy to:

Skye Masson, City Attorney
City of Georgetown
808 Martin Luther King Jr. St.
Georgetown, Texas 78626

If intended for the City, to:

David Morgan, City Manager
City of Georgetown
808 Martin Luther King Jr. St.
Georgetown, Texas 78626

If intended for Company, to:

Titan NorthPark35, LLC
Attn: Kevin L. Reid, Manager
9601 McAllister Fwy., Suite 1120
San Antonio, Texas 78216

With a copy to:

Titan NorthPark35, LLC
Attn: Christopher M. Pacheco
6300 Riverside Plaza Ln, NW Suite 200
Albuquerque, New Mexico 87120

6.5 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.6 Governing Law. This Agreement shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in the State District Court of Williamson County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

6.7 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

6.8 Legal Construction. In the event 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 other provisions, and it is the intention of the Parties that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.9 Recitals. The recitals to this Agreement are incorporated herein.

6.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the amount of the Grant and any other funds received by Company from GTEC as of the date of such violation within 120 days after the date Company is notified by GTEC of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts.

6.14 Prohibition of Boycott Israel. Company verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if Company is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) Company has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

6.15 Conditions Precedent. This Agreement is expressly subject to and the obligations of the Parties are conditioned on: (i) the Company closing its purchase of the NP110 Land, being a portion of the Land; (ii) execution of the GEDCO/City Economic Development Agreement; and (iii) Company and City execution of the City Economic Development Agreement.

[Signature Pages to Follow]

EXECUTED on this _____ day of _____, 2020.

GEORGETOWN TRANSPORTATION ENHANCEMENT CORPORATION

By: _____
John Marlier, President

State of Texas §
County of Williamson §

This instrument was acknowledged before me on the _____ day of _____, 2020, by John Marlier, as President of Georgetown Transportation Enhancement Corporation, a Type B sales tax corporation, on behalf of said corporation.

Notary Public, State of Texas

(Notary Seal)

My Commission Expires: _____

EXECUTED on this _____ day of _____, 2020.

TITAN NORTHPARK35, LLC

By: **Titan Property Management, LLC
Its Manager**

By: _____
Kevin L. Reid, Manager

State of Texas §
County of Bexar §

This instrument was acknowledged before me on the _____ day of _____, 2020, by Kevin L. Reid, as Manager of Titan Property Management, LLC, as Manager of Titan NorthPark35, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

(Notary Seal)

My Commission Expires: _____

CERTIFICATION OF CITY COUNCIL APPROVAL

I hereby certify that the foregoing Economic Development Incentive Agreement of the Georgetown Transportation Enhancement Corporation and the Improvements described therein was approved by the City Council of the City of Georgetown, Texas, on the ____ day of _____, 2020.

THE CITY OF GEORGETOWN, TEXAS
A Texas home-rule municipality

By: _____
Dale Ross, Mayor

By: _____
Robyn Densmore, City Secretary

APPROVED AS TO FORM:

By: _____
Skye Masson, City Attorney

EXHIBIT "A"

Description of the Land

NP35 LAND:

Tract 1:

Lot 1, Block A, of TITAN NORTHPARK 35 PHASE I, a subdivision in Williamson County, Texas, according to the map or plat recorded in Document No. 2020124920, Official Public Records of Williamson County, Texas.

Tract 2:

Lot 2, Block A, of TITAN NORTHPARK 35 PHASE I, a subdivision in Williamson County, Texas, according to the map or plat recorded in Document No. 2020124920, Official Public Records of Williamson County, Texas.

Tract 3:

DESCRIPTION, of a 11.227 acre tract of land situated in the David Wright Survey, Abstract No. 13, Williamson County, Texas; said tract being part of that certain tract of land described as "Tract 1" in General Warranty Deed with Vendor's Lien to Motion Investment Properties, LLC recorded in Document Number 2019046625 of the Official Public Records of Williamson County, Texas; said 11.227 acre tract being more particularly described as follows:

COMMENCING, at a 1/2-inch iron rod found in the south right-of-way line of Aviation Drive (a variable width right-of-way) and the north line of that certain tract of land described in Warranty Deed to MARBERT G. MOORE, L.P. recorded in Document Number 2003016058, of said Official Public Records; said point being the south corner of the east terminus of said Aviation Drive and the southwest corner of said "Tract 1";

THENCE, North 69 degrees, 21 minutes, 57 seconds East, departing the said terminus of Aviation Drive and along the south line of said "Tract 1" and the said north line of the Marbert G. Moore tract, a distance of 1,239.60 feet to a point;

THENCE, departing the said south line of "Tract 1" and the said north line of the Marbert G. Moore tract and into, over and across said "Tract 1", the following six (6) calls:

North 21 degrees, 21 minutes, 24 seconds West, a distance of 55.00 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner at the POINT OF BEGINNING;

South 69 degrees, 21 minutes, 57 seconds West, a distance of 616.65 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 66 degrees, 00 minutes, 09 seconds West, a distance of 36.85 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 21 degrees, 21 minutes, 24 seconds West, a distance of 731.75 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 68 degrees, 38 minutes, 36 seconds East, a distance of 642.50 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;
South 21 degrees, 21 minutes, 24 seconds East, a distance of 765.75 feet to the POINT OF BEGINNING;

CONTAINING, 489,055 square feet or 11.227 acres of land, more or less.

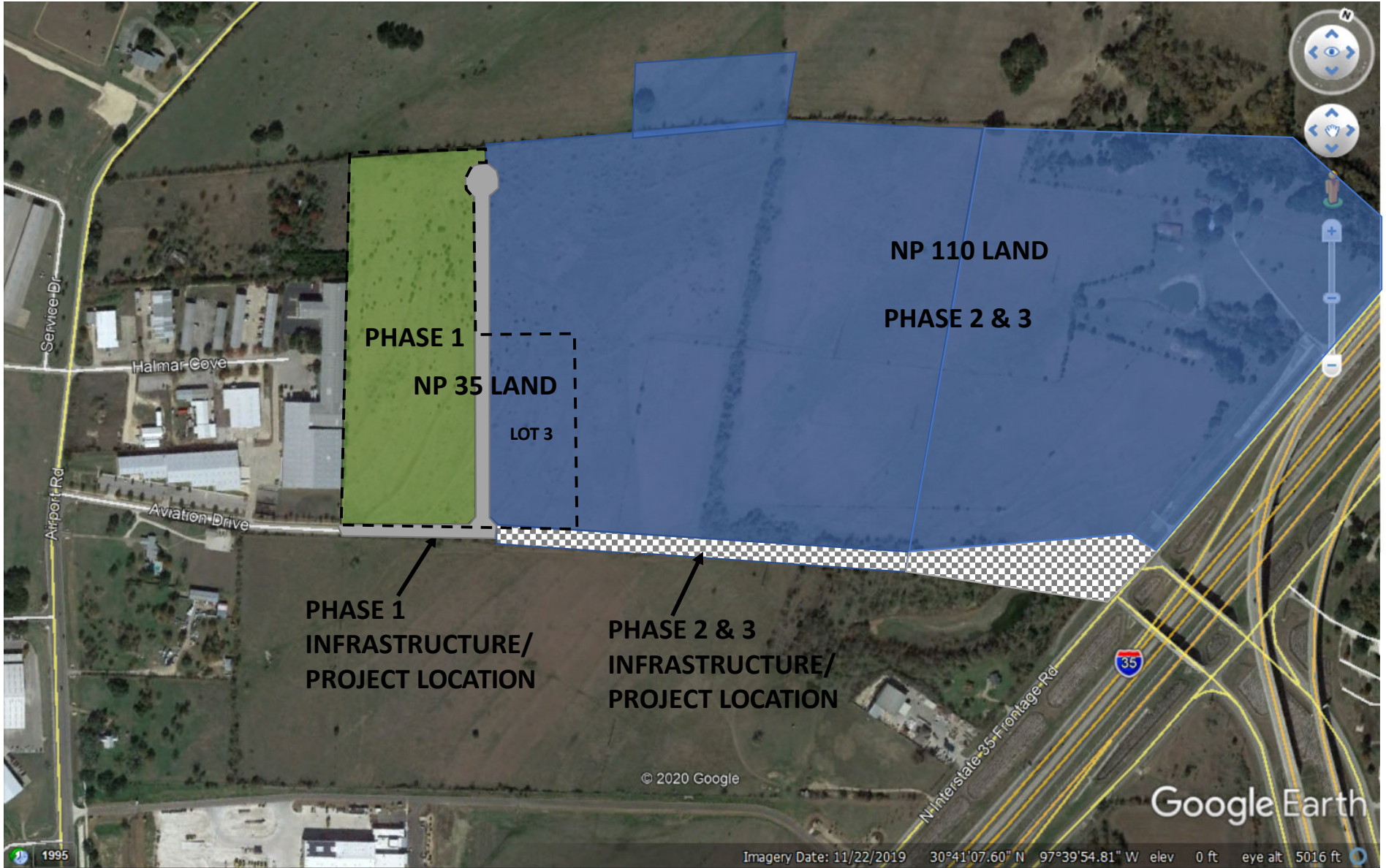
NP110 LAND:

That certain real property consisting of approximately 110.137 acres being situated in the David Wright Survey, Abstract No. 13, Williamson County, Texas and being a part of that certain tract of land described as "Tract 1" and all of that certain tract of land described as "Tract 2" in General Warranty Deed to Motion Investment Properties, LLC recorded in Document No. 2019046625 of the Official Public Records of Williamson County, Texas

EXHIBIT “B”

Depiction of Project

[see attached]



**PHASE 1
NP 35 LAND
LOT 3**

**NP 110 LAND
PHASE 2 & 3**

**PHASE 1
INFRASTRUCTURE/
PROJECT LOCATION**

**PHASE 2 & 3
INFRASTRUCTURE/
PROJECT LOCATION**

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