

RESOLUTION NO. 2021-01-09

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN ECONOMIC DEVELOPMENT GRANT AGREEMENT BY AND BETWEEN THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS, (LEDC) AND KODIAK ROBOTICS, INC. AND AUTHORIZING THE LEDC TO ENTER INTO A FORMAL AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Kodiak Robotics, Inc. seeks to upgrade its facility in order to commit to maintaining operations in Lancaster through the end of December 2023; and

**WHEREAS**, pursuant to Lancaster Economic Development Corporation (hereinafter "LEDC") Resolution 2020-12-02, which was passed and approved on the 8th of December, 2020 by the Board of Directors of the LEDC, offering an incentive grant to Kodiak Robotics, Inc.; and

**WHEREAS**, the City of Lancaster and LEDC recognize the importance of their continued role in economic development in the community of Lancaster; and

**WHEREAS**, the City of Lancaster and LEDC are authorized by state law to issue grants in order to promote local economic development by stimulating the local economy; and

**WHEREAS**, an Economic Development Grant Agreement containing the terms of the grant of incentives from the LEDC is appropriate.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:**

**SECTION 1.** The City Council of the City of Lancaster, Texas ratifies the December 8, 2020 actions of the Board of Directors of the LEDC approving a Grant Agreement by and between Kodiak Robotics, Inc. and the Economic Development Corporation, as set forth in and incorporated by reference as Exhibit 1.

**SECTION 2.** The City Council authorizes the LEDC to enter into a Grant Agreement with Kodiak Robotics, Inc.

**SECTION 3.** That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

**DULY PASSED** and approved by the City Council of the City of Lancaster, Texas, on this the 11th day of January, 2021.

**ATTEST:**



Sorangel O. Arenas, City Secretary

**APPROVED:**



Clyde C. Hairston, Mayor

**APPROVED AS TO FORM:**



David T. Ritter, City Attorney

## PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between **KODIAK ROBOTICS, INC.** a Delaware corporation (hereinafter referred to as "Developer"), and the **LANCASTER ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "LEDC"), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, LEDC is a Type A economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the "Act"), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

**WHEREAS**, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (D) recycling facilities; . . . (E) distribution centers; (F) small warehouse facilities capable of serving as decentralized storage and distribution centers; (G) primary job training facilities for use by institutions of higher education; or (H) regional or national corporate headquarters facilities"; and

**WHEREAS**, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . ."; and

**WHEREAS**, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless LEDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by LEDC's investment; a schedule of capital investments to be made as consideration for any direct incentives provided by LEDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

**WHEREAS**, Developer has applied to LEDC for financial assistance to install a HVAC system at their facility located at 3901 Corporate Drive, Lancaster, Texas within the city limits of the City of Lancaster, Texas; ("the Facility") on real property owned or leased by the Developer ("the Property") and

**WHEREAS**, the LEDC's Board of Directors have determined the financial assistance provided to Developer for Facility operations located on the Property is consistent with and meets the definition of "project" as that term is defined in Sections 501.101 and 501.103 of the

Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

**WHEREAS**, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Lancaster, Texas, to approve all programs and expenditures of LEDC, and accordingly this Agreement is not effective until City Council has approved this Agreement at a City Council meeting called and held for that purpose.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LEDC and Developer agree as follows:

**SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

**SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until **January 31, 2024**, unless terminated sooner under the provisions hereof.

**SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **Certificate of Occupancy.** The words “Certificate of Occupancy” mean a certificate of occupancy (or its local equivalent) for the shell improvements at the Facility.
- (d) **City.** The word “City” means the City of Lancaster, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 211 N. Henry Street, Lancaster, Texas 75146.
- (e) **Developer.** The word “Developer” means **Kodiak Robotics, Inc.** a Delaware Corporation, its successors and assigns, whose address for the purposes of this Agreement

is 1049 Terra Bella Avenue, Mountain View, CA 94043.

- (f) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Developer and LEDC, following approval by their respective Council and Board.
- (g) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (h) **Facility.** The word Facility means City-located operations office located on the Property and as described and/or depicted in *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes. In order to qualify as the “Facility” under this Agreement, the facility must meet all of the following criteria: (1) be located within the City; and (2) maintain a Certificate of Occupancy during the duration of this Agreement; and (3) remain in operation in the City of Lancaster for at least three (3) years following the disbursement of funds under this Agreement.
- (i) **LEDC.** The word “LEDC” means the Lancaster Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is P.O. Box 940, Lancaster, Texas 75146.
- (j) **Property.** The word “Property” means the approximately 414,618 square feet currently known as the SouthPointe Corporate Center as generally described and/or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes, together with any other adjacent land owned, leased or hereafter acquired by Developer
- (k) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

#### **SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.**

Developer covenants and agrees with LEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Occupation of Facility.** Developer covenants and agrees to occupy the Facility by **January 1, 2021**.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained a Certificate of Occupancy from the City for the Facility located on the Property by **January 31, 2021** or such later time as the Certificate of Occupancy is issued by the City if Developer has appropriately applied for such certificate by January 15, 2021.

- (c) **Operation of Facility.** Developer covenants and agrees to maintain and actively operate the Facility located on the Property at least through December 31, 2023.
- (d) **Internship Program.** In order to be eligible to receive LEDC funds under this Agreement, Developer must create an internship program in conjunction with Dallas College no later than September 1, 2021. In addition, subject to an introduction to the appropriate parties by LEDC and/or the City, no later than December 31, 2021, Developer will provide documentation (for which email shall suffice) showing at least two (2) meetings (which can be in-person or virtual) with Lancaster ISD personnel regarding potential future internship programs with LISD students focused on STEM or applied science.
- (e) **Capital Investment.** In order to be eligible to receive LEDC funds under this Agreement, Developer must invest not less than two hundred fifty thousand dollars (\$250,000.00) in the Facility, (exclusive of any grant awards issued under this program) within one (1) year of the Effective Date of this Agreement, and provide to the City receipts for the same, which for the avoidance of doubt can include any tenant improvement allowance under the Developer's lease for the Facility.
- (f) **Payment of City Fees.** Developer covenants and agrees to pay to the City all City-related development fees for the development of the Property, construction of the Facility and for Facility Operations. Those fees include (but may not be limited to) the following: special use permit fees, building permit fees, sign permit fees, plan review fees, plumbing, heating and electrical permit fees, grading permit fees, architectural review fees, variance application fees, and zoning change fees.
- (g) **Definition of and Documentation of Development Costs.** Developer covenants and agrees to obtain accurate invoices, receipts, and other written documentation regarding the amount of: (1) capital investment; and (2) HVAC costs for which Developer is seeking reimbursement, that are actually incurred and paid for the development of the Property and improvement to the Facility by January 31, 2021.
- (i) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between Developer and LEDC and between Developer and City.

## **SECTION 5. AFFIRMATIVE COVENANTS OF LEDC.**

LEDC covenants and agrees with the Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **HVAC-Specific /Site Development Grant.** LEDC covenants and agrees to provide a

Site Development Grant of funds of up to an aggregate total of **seventy-seven thousand, nine hundred and no/100 Dollars (\$77,900.00)**. The funds may be used to reimburse Developer for actual expenses incurred and paid for HVAC-related improvements on the Facility, such improvements to be made within one (1) year of the Effective Date of this Agreement. Reimbursement of funds to Developer will be made reasonably promptly following submission of accurate invoices, receipts and other written documentation as reasonably requested by LEDC.

- (b) **Maximum LEDC Payment under this Agreement.** The Parties agree that, notwithstanding anything to the contrary in this Agreement or any other Agreement involving the Facility and/or Property, LEDC's maximum payment to Developer under the terms provided for hereunder (provided all conditions precedent to payment set forth herein are met) shall be **seventy-seven thousand, nine hundred and no/100 Dollars (\$77,900.00)**.

## **SECTION 6. CESSATION OF ADVANCES.**

If LEDC has made any commitment to make any advance of financial assistance to Developer, whether under this Agreement or under any other agreement, LEDC shall have no obligation to advance or disburse any financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs and is not cured within the time period provided in Section 8.

## **SECTION 7. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or LEDC to materially comply with or to materially perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or LEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and LEDC, or between Developer and City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the LEDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or

contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from LEDC and/or Dallas County Central Appraisal District is an Event of Default.

- (e) **Operations.** Developer will maintain its Facility within the City of Lancaster in full operations through at least December 31, 2023. Failure to do so will cause a non-remediable Event of Default and all funds disbursed under this Agreement will be returned to LEDC within thirty (30) days.

#### **SECTION 8. EFFECT OF AN EVENT OF DEFAULT.**

In the event of default under Section 7 (a)-(d) of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure a monetary default and ninety (90) days to cure a non-monetary default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by LEDC to Developer pursuant to Section 5 of this Agreement shall become due and payable within 30 days by Developer to the LEDC.

#### **SECTION 9. INDEMNIFICATION.**

**TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.**

#### **SECTION 10. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or

parties sought to be charged or bound by the alteration or amendment.

- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts or federal courts for Dallas County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. LEDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:

if to Developer:

Kodiak Robotics, Inc.  
1049 Terra Bella Avenue

Mountain View, CA 94043  
Attn: Legal Department  
Email: legal@kodiak.ai

if to LEDC:

Lancaster Economic Development Corporation  
P.O. Box 940  
Lancaster, Texas 75146  
Attn: Director  
Telephone: 972/218-1303

- (i) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120<sup>th</sup> day after the date LEDC notifies Developer of the violation.
- (l) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85<sup>th</sup> Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (m) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S.B. 252, 85<sup>th</sup> Leg., R.S. (2017)), the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (n) **Estoppel Certificate.** Upon written request by Developer to LEDC, LEDC will provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of the breach, and (ii) a statement as to whether this Agreement has been amended and, if so, the identity and substance of each amendment.

**[The Remainder of this Page Intentionally Left Blank]**

**DEVELOPER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND DEVELOPER AGREES TO ITS TERMS. THIS PERFORMANCE AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.**

**DEVELOPER:**

***KODIAK ROBOTICS, INC.,  
a Delaware corporation***

By:   
Name: Jordan Coleman  
Position: Genl Counsel  
Date Signed: 1/12/21

**STATE OF TEXAS** §  
§  
**COUNTY OF \_\_\_\_\_** §

This instrument was acknowledged before me on the \_\_\_\_\_ day of December, 2020 by \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ [state][entity type], on behalf of said [state] [entity type].

\_\_\_\_\_  
Notary Public, State of Texas

**LEDC:**

**LANCASTER ECONOMIC  
DEVELOPMENT CORPORATION,**  
a Texas non-profit corporation

By: Jed Bunk  
Name: \_\_\_\_\_  
President  
Date Signed: 2/1/2021

**ATTEST:**

\_\_\_\_\_  
Shane Shepard, Secretary

STATE OF TEXAS                   §  
   §  
COUNTY OF DALLAS           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of December 2020, by \_\_\_\_\_, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, on behalf of said Texas corporation.

\_\_\_\_\_  
Notary Public, State of Texas

*Exhibit A*

[Legal Description and/or Depiction of Property]

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF REAL PROPERTY**

**TRACT ONE (FEE TRACT)**

BEING ALL OF LOT 3, BLOCK 1, OF SOUTHPONTE CORPORATE CENTER, AN ADDITION TO THE CITY OF LANCASTER, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN INSTRUMENT NUMBER 201300251920, OFFICIAL PUBLIC RECORDS OF DALLAS COUNTY, TEXAS.

**TRACT TWO (FEE TRACT)**

BEING A 25.334 ACRE TRACT OF LAND SITUATED IN THE SILAS B. RUNYON SURVEY, ABSTRACT NO. 1199, CITY OF LANCASTER, DALLAS COUNTY, TEXAS AND BEING ALL OF THAT CALLED 25.4716 ACRE TRACT OF LAND DESIGNATED AS TRACT 2C IN THE WARRANTY DEED TO HIGHLAND PARK LAND COMPANY RECORDED IN INSTRUMENT NUMBER 201100269768, OFFICIAL PUBLIC RECORDS OF DALLAS COUNTY, TEXAS, (O.P.R.D.C.T.), SAID 25.334 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A TEXAS DEPARTMENT OF TRANSPORTATION CONCRETE RIGHT-OF-WAY MARKER FOUND FOR THE NORTHWEST CORNER OF SAID 25.4716 ACRE TRACT OF LAND AND BEING IN THE SOUTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 20, (A VARIABLE WIDTH CONTROLLED ACCESS PUBLIC RIGHT-OF-WAY, AS DESCRIBED TO THE STATE OF TEXAS IN THE DEED RECORDED IN VOLUME 835, PAGE 1128 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS, (D.R.D.C.T.), AND BEING THE NORTHEAST CORNER OF THAT CALLED 1.595 ACRE TRACT OF LAND DESCRIBED TO JMJ DIRECTION OUTDOOR, LLC IN THE SPECIAL WARRANTY DEED RECORDED IN INSTRUMENT NUMBER 201100228492, O.P.R.D.C.T.

THENCE NORTH 87°03'19" EAST ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 20, A DISTANCE OF 734.17 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR CORNER.

THENCE NORTH 84°12'30" EAST CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 111.02 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR THE NORTH END OF A CORNER CLIP AT THE INTERSECTION OF SOUTHERLY RIGHT-OF-WAY LINE OF SAID INTERSTATE HIGHWAY 20 WITH THE WESTERLY RIGHT-OF-WAY LINE OF CORPORATE DRIVE, (A 50-FOOT PUBLIC RIGHT-OF-WAY) AS DEDICATED BY THE FINAL PLAT OF SOUTHPONTE CORPORATE CENTER, AN ADDITION TO THE CITY OF LANCASTER RECORDED IN INSTRUMENT NUMBER 201000105011, O.P.R.D.C.T.

THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID CORPORATE DRIVE, THE FOLLOWING SIX (6) CALLS:

1. SOUTH 49°59'52" EAST ALONG SAID CORNER CLIP, A DISTANCE OF 34.87 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR CORNER.
2. SOUTH 04°12'18" EAST, A DISTANCE OF 34.31 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 475.00 FEET;
3. SOUTHEASTERLY WITH SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 44°17'05" FOR AN ARC LENGTH OF 367.13 FEET, A CHORD BEARING OF SOUTH 26°20'50" EAST AND A CHORD DISTANCE OF 358.06 FEET TO A 5/8-INCH IRON ROD

- WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR THE POINT OF TANGENCY;
4. SOUTH 48°29'23" EAST, A DISTANCE OF 163.78 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 425.00 FEET;
  5. SOUTHEASTERLY WITH SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 47°10'59" FOR AN ARC LENGTH OF 349.99 FEET, A CHORD BEARING OF SOUTH 24°53'53" EAST AND A CHORD DISTANCE OF 340.18 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR THE POINT OF TANGENCY;
  6. SOUTH 01°18'24" EAST, A DISTANCE OF 278.24 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR THE POINT OF INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SOUTHPOINTE DRIVE, (A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY) AS DEDICATED BY SAID FINAL PLAT OF SOUTHPOINTE CORPORATE CENTER;

THENCE NORTH 88°41'36" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 2,263.75 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR THE NORTH END OF A CORNER CLIP AT THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE WITH THE WESTERLY RIGHT-OF-WAY LINE OF HOUSTON SCHOOL ROAD, (A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY);

THENCE SOUTH 46°18'44" EAST ALONG SAID CORNER CLIP, A DISTANCE OF 28.29 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR THE SOUTH END OF SAID CORNER CLIP IN THE WESTERLY RIGHT-OF-WAY LINE OF SAID HOUSTON SCHOOL ROAD AND BEING IN THE NORTH LINE OF THE REMAINING PORTION OF THAT CALLED 0.50 ACRE TRACT OF LAND DESCRIBED IN THE SPECIAL WARRANTY DEED FROM LARRY RHOADES AND RHONDA CLEVELAND RHOADES TO JAMIE VILLANUEVA RECORDED IN VOLUME 2003174, PAGE 2320, D.R.D.C.T.;

THENCE SOUTH 88°41'36" WEST ALONG THE COMMON LINE OF SAID 25.4716 ACRE TRACT OF LAND AND SAID 0.50 ACRE TRACT OF LAND, AT A DISTANCE OF 568.25 FEET PASSING THE NORTHWEST CORNER OF SAID 0.50 ACRE TRACT OF LAND SAME BEING THE MOST NORTHERLY NORTHEAST CORNER OF THAT CALLED 60.959 ACRE TRACT OF LAND DESCRIBED TO RANDY JUSTISS AND VIRGINIA A. JUSTISS IN THE EXCUTER'S DEED RECORDED IN INSTRUMENT NUMBER 200900077417, O.P.R.D.C.T., CONTINUING ALONG THE COMMON LINE OF SAID 25.4716 ACRE TRACT OF LAND AND SAID 60.959 ACRE TRACT OF LAND IN ALL FOR A TOTAL DISTANCE OF 2,118.45 FEET TO A 5/8-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BURY" SET FOR CORNER;

THENCE SOUTH 01°06'22" EAST CONTINUING ALONG THE COMMON LINE OF SAID 25.4716 ACRE TRACT OF LAND AND SAID 60.959 ACRE TRACT OF LAND, A DISTANCE OF 312.49 FEET TO A 5/8-INCH IRON ROD FOUND FOR CORNER IN THE NORTH LINE OF LOT 2, BLOCK A OF CONTRACT FREIGHTERS, INC. ADDITION, AN ADDITION TO THE CITY OF LANCASTER ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 99155, PAGE 60, D.R.D.C.T.;

THENCE SOUTH 88°58'03" WEST ALONG THE COMMON LINE OF SAID 25.4716 ACRE TRACT OF LAND AND SAID LOT 2, AT A CALLED DISTANCE OF 144.68 FEET PASSING THE NORTHWEST CORNER OF SAID LOT 2 SAME BEING THE NORTHEAST CORNER OF LOT 1, BLOCK A OF SAID CONTRACT FREIGHTERS, INC. ADDITION, CONTINUING ALONG THE COMMON LINE OF SAID 25.4716 ACRE TRACT OF LAND AND SAID LOT 1 IN ALL FOR A TOTAL DISTANCE OF 733.61 FEET TO A 5/8-INCH IRON ROD FOUND FOR THE MOST SOUTHERLY SOUTHWEST CORNER OF SAID 25.4716 ACRE TRACT OF LAND AND BEING IN THE EAST RIGHT-OF-WAY LINE OF EATON AVENUE (A CALLED 50-FOOT PUBLIC RIGHT-OF-WAY) AS DEDICATED BY THE DANIELDALE ADDITION, AN ADDITION TO THE CITY OF LANCASTER RECORDED IN VOLUME 35, PAGE 213, MAP RECORDS OF DALLAS COUNTY, TEXAS (M.R.D.C.T.);

THENCE ALONG THE COMMON LINE OF SAID 25.4716 ACRE TRACT OF LAND AND SAID DANIELDALE ADDITION, THE FOLLOWING TWO (2) CALLS:

1. NORTH 00°01'45" WEST, A DISTANCE OF 833.92 FEET TO A 5/8-INCH IRON ROD FOUND FOR THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF SAID EATON AVENUE WITH THE NORTH RIGHT-OF-WAY LINE OF BRANTLEY DRIVE (A CALLED 25-FOOT PUBLIC RIGHT-OF-WAY) AND FROM WHICH A 1/2-INCH IRON ROD FOUND BEARS NORTH 03°33' EAST, A DISTANCE OF 13.4 FEET;
2. SOUTH 89°05'58" WEST, A DISTANCE OF 724.42 FEET TO A 1/2-INCH IRON ROD FOUND FOR THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF SAID BRANTLEY DRIVE WITH THE EAST RIGHT-OF-WAY LINE OF PATMAN DRIVE (A CALLED 50-FOOT PUBLIC RIGHT-OF-WAY) AND FROM WHICH A 1/2-INCH IRON ROD FOUND BEARS SOUTH 00°53' EAST, A DISTANCE OF 6.7 FEET AND A 1/2-INCH IRON ROD FOUND BEARS NORTH 87°21' WEST, A DISTANCE OF 19.4 FEET;

THENCE NORTH 01°48'07" WEST, CONTINUING ALONG SAID COMMON LINE AT A DISTANCE OF 345.04 FEET PASSING THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF SAID PATMAN DRIVE WITH THE NORTH RIGHT-OF-WAY LINE OF SAID BRANTLEY DRIVE SAME BEING THE SOUTHEAST CORNER OF THE AFOREMENTIONED 1.595 ACRE TRACT OF LAND DESCRIBED TO JMJ DIRECTION OUTDOOR, L.L.C, CONTINUING ALONG THE COMMON LINE OF SAID 1.595 ACRE TRACT OF LAND AND SAID 25.4716 ACRE TRACT OF LAND IN ALL A TOTAL DISTANCE 533.50 FEET TO THE POINT OF BEGINNING;

CONTAINING A COMPUTED AREA OF 1,103,536 SQUARE FEET OR 25.334 ACRES OF LAND.

NOTE:

THIS DESCRIPTION WAS PREPARED TO REFLECT THE CURRENT CONDITIONS OF THE SUBJECT PROPERTY

TRACT THREE (EASEMENT ESTATE)

NON-EXCLUSIVE EASEMENT PURSUANT TO GRADING EASEMENT GRANTED BY RANDY JUSTISS, AS INDEPENDENT EXECUTOR OF THE ESTATE OF OSCAR VICTOR EASTEP, DECEASED, TO WRC SOUTHPOINTE BUILDING 1 PARTNERS, L.P. AND WRC SOUTHPOINTE LAND PARTNERS, L.P. DATED MARCH, 31, 2008, FILED MAY 02, 2008, RECORDED UNDER CLERK'S FILE NO. 20080146189, REAL PROPERTY RECORDS OF DALLAS COUNTY, TEXAS, OVER, UPON AND ACROSS THE PROPERTY DESCRIBED BY METES AND BOUNDS ON EXHIBIT "D" THEREIN.

*Exhibit B*

[Facility – Site Plan]

**EXHIBIT A**

**PREMISES**

