

**ENCROACHMENT
EASEMENT AND
MAINTENANCE
AGREEMENT**

This Space is for Recorder's Office use only

Mail to:

**Mural Fazal
1 S. 376 Summit Avenue
Court A – Suite 2B
Oak Brook Terrace, IL
60181**

Name & Address of Preparer

**Robert Aprati
Attorney at Law
67 Forest Gate Circle
Oak Brook, IL 560523**

THIS ENCROACHMENT EASEMENT AND MAINTENANCE AGREEMENT (this "**Agreement**") is entered into as of the ____ day of _____, 2024, by and between the City of Aurora, an Illinois corporation, ("the **City**"), and FLIP 25, LLC, an Illinois limited liability company (the "**Developer**")

WITNESSETH:

WHEREAS, the City has jurisdiction over City Public Right of Ways and City Easement, as depicted on Exhibit A- City Public Right of Ways ("**Easement Area**")

WHEREAS, The Developer is the owner of that certain real property ("**Developer Property**") located in the City of Aurora, Illinois identified as PIN No. 15-15-201-041, lot 1 of Fazal Subdivision, on Exhibit B- Lot 1 Fazal Subdivision, attached to and incorporated in this Agreement, ; and upon which the Developer intends to construct a gas station and related convenience store ("**Developer Building**"); as shown on Exhibit C-"Site Improvements Plan" and,

WHEREAS, the Developer desires to construct, and install, a sanitary sewer force main service line running from the Developer Property, crossing Indian Trail and Aurora Avenue right of way and connecting to the existing public sanitary sewer main, located within the easement area (collectively the "**Developer Improvements**").

WHEREAS, the Developer Improvements, will require access and will encroach onto the City Easement Area Area"); and,

WHEREAS, the City desires to grant certain easement rights in, on, over, under, and through the Easement Area in order to allow the Developer to access the Easement Area to construct, install, maintain, repair, replace and use the Developer Improvements; and

WHEREAS, the Developer desires to execute this Agreement for the purpose of acknowledging the terms of the Developer's right to access and use the Easement Area for the construction, installation, maintenance, repair, replacement, and use of the Developer Improvements .

NOW, THEREFORE, in consideration of the promises set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City does hereby grant and convey unto the Developer, its successors, heirs and assigns, the following easements, rights, covenants, and undertakings pursuant to which the Easement Area shall be, occupied and used: by the Developer.

1. **Incorporation of Recitals.** The foregoing recitals are incorporated into and shall constitute an integral part of this Agreement and this Agreement shall be construed in light thereof.

2. **Grant of Easement for The Developer Improvements.** The City hereby grants and conveys to the Developer a non-exclusive, perpetual easement, right, and privilege benefitting the Developer Property in, on, over, under, and through the Easement Area for the purposes of: (1) construction, installation, maintenance, repair, replacement, inspection, removal, and use of the Developer Improvements within the Easement Area in perpetuity, and (2) allowing the Developer Improvements to exist within the Easement Area for the use and benefit of Developer Property.

3. The Developer shall be solely responsible for the construction, installation, maintenance, repair, relocation and replacement of the Developer Improvements at no costs to the City in accordance with all applicable laws, ordinances, codes, rules, and regulations (the "Laws").

4. The Developer shall be responsible for locating the Developer Improvements as requested as part of JULIE and shall be responsible for resolving any conflicts, damages, repair, or replacement to the Developer Improvements caused by a third party.

5.

a. If the City provides written notice to the Developer that any Developer Improvements do not comply with any of the Laws and if the Developer fails to bring such

Improvement into compliance within forty five (45) days after receipt of such written notice (or such longer period of time as is reasonably agreed to by the City, so long as the Developer promptly commences and diligently pursues compliance within such 45-day period), the City shall have the right to enforce the applicable provisions of any such law in any manner authorized thereby. In addition to any obligations that the Developer may have under this Agreement, the Developer shall also be responsible for the reimbursement of the City's actual out-of-pocket costs paid in furtherance of such enforcement of applicable Laws after receipt by the Developer from the City of evidence reasonably acceptable to the Developer that the City has paid such costs. If the Developer shall fail to pay any undisputed amount owed to the City hereunder when due, and such failure shall continue for more than thirty (30) days following the Developer's receipt of written notice from the City, then the City shall have the right to file a lien against the Developer Property until such amount is paid, at which time the City shall promptly record a release of lien against the Developer Property. Exercising the City's enforcement rights pursuant to this Section shall not limit or waive any of the City's other rights or remedies in this Agreement or at law or in equity.

b. The City shall not interfere with the Developer's rights to use or access the Easement Area in accordance with the provisions of this Agreement; provided, however, the City reserves the right, for itself and other related governmental entities authorized by the City, including, without limitation, the Fox Metro Water Reclamation District, the absolute, unrestricted, right to use the Easement Area in any way that does not interfere with the Developer's rights under this Agreement, including, without limitation, the right to access the Easement Area to install, maintain, repair, and replace without limitation, the Developer Improvements if and when necessary.

c. If the City becomes aware of any of the Developer Improvements creates an imminent and material risk to the health or safety of any property or persons who may access or use the Easement Area, the City may immediately take any action it deems appropriate to minimize or eliminate such risk and may take reasonable steps to notify the Developer before it takes such action, but is under no obligation to do so; provided, however, that the City will notify the Developer as soon as reasonably practicable of any actions that the City takes pursuant to this paragraph.

d. Upon written request from the City and if a gravity sanitary sewer main becomes available, Developer and/or any subsequent property owner shall remove the Developer Improvements, including the removal of the lift station, at no cost to the City.

e. The City will not locate the private line within the City's right-of-way. It is the responsibility of the Developer and/or any subsequent property owner to join JULIE in the monitoring of any construction that may occur near the service line.

f. The Developer and/or any subsequent property owner will be responsible for

repair and maintenance of the Developer Improvements , including damage caused by a third party. The City will not be responsible for resolving any conflicts between the owner and the party that caused the damage.

6. **Insurance and Indemnification.**

a. **Insurance.** The Developer agrees to maintain, on a primary basis and at its sole expense at all times that this Agreement is in effect, the following minimum applicable coverages and limits. The insurance requirements contained in this Agreement, as well as the City's review or acceptance of insurance maintained by the Developer, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Developer under this Agreement.

- i. *Commercial General Liability* – Combined single limit of no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- ii. *Umbrella or Excess Liability* – The Developer will provide proof of Umbrella or Excess Liability coverage with an annual aggregate limit of an additional \$3,000,000.
- iii. *Additional Insured* – The Developer agrees to endorse the City as a non-contributing Additional Insured on both the Commercial General Liability Policy and the Umbrella or Excess Liability Policy. The Additional Insured shall read the "City of Aurora as its interest may appear."
- iv. *Certificate of Insurance* – The Developer shall provide the City a Certificate of Insurance evidencing that all coverages, limits, and endorsements required in this Agreement are maintained and in full force and effect. Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by the Developer's insurer. If the Developer receives a notice of non-renewal or notice of cancellation from an insurance carrier affording coverage required in this Agreement, or if the Developer receives a notice that coverage no longer complies with the Insurance requirements in this Agreement, the Developer shall notify the City within five (5) business days and provide the City with a copy of any such notice.

b. **Indemnification.**

- i. *Definitions in this Section 4(b)* – **"Charge"** means claims, lawsuits, judgments, costs (including, without limitation reasonable attorney" fees), damages, losses, demands, liabilities, fines, penalties, settlements, and expenses. **"Indemnitee"** means the City and its past, current, and future officers, officials, independent

contractors, agents, attorneys, and employees, excluding the Developer.

- ii. **Indemnification** – To the maximum extent allowed by law, and subject to subsection iii below, the Developer shall defend (with legal counsel reasonably acceptable to the City and the Developer), indemnify, and hold harmless the Indemnitees from and against all Charges for property damage or personal injury to the extent that such Charges arise from, in connection with, or out of: (a) the failure of the Developer, its contractors, agents, or anyone directly or indirectly employed by any of them to perform the Developer's obligations under this Agreement; and (b) any negligent acts or omissions of the Developer, its contractors, agents, or anyone directly or indirectly employed by any of them in the performance of the Developer's obligations under this Agreement.
- iii. **Limitation** – In no event shall the City be required to defend, indemnify or hold harmless the Indemnitees to the extent any such Charges arise from the negligence or misconduct of any of the Indemnitees.
- iv. **Other Provisions Separate** – Nothing in this Section 4(b) shall affect any warranties, rights or duties in favor of the City that are otherwise provided in or arise out of this Agreement.
- v. **Separate Obligations**— This Section 4(b) is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.
- vi. **Survival** – This Section 4(b) shall remain in force after the termination of this Agreement with respect to Charges that arise from acts or omissions that occurred before the date of any termination of this Agreement (but not with respect to Charges that arise from acts or omissions that occurred after the date of any termination of this Agreement).

7. **Covenants Running with the Land.** This Agreement shall run with the land and be binding on all successors, heirs and assigns as to both the Developer Property and the City Easement Area. Further, this Agreement shall run with the land and be appurtenant to, and for the benefit of, the Developer Property and the owner of the Developer Property. Any conveyance of the Developer Property, or any portions thereof, shall be subject to the easements, rights, covenants, obligations and undertakings contained in this Agreement, and, at the time of conveyance, the grantor in any deed of conveyance shall be relieved of future obligations thereafter arising by the owners of the lot or property interest so conveyed, but the grantor in any deed of conveyance shall not be relieved of obligations that are based on acts, omissions, or events that occurred before the time of conveyance. Any grantee of the Developer or the City or their successors, heirs or assigns, by recordation of a deed or other instrument of transfer or conveyance of the Developer Property or the City Easement Area shall be deemed

to have assumed the obligations under this Agreement with respect to such property.

8. **Amendment and Termination**. This Agreement may be modified, amended or terminated only by written agreement of the City and the Developer, and shall be duly acknowledged in a manner suitable for and effective upon recording in the Office of the Recorder of Deeds of Kane County, Illinois. This Section 6 is subject to Section 15 (Performance of Government Functions).

9. **Governing Law & Venue**. The Parties agree that in the event of litigation arising from this Agreement, the exclusive venue for the adjudication of such disputes shall be the Circuit Court of the Sixteenth Judicial Circuit, Kane County and that the Illinois law shall apply to such disputes without regard to its choice of law principles.

10. **No Public Dedication; No Third-Party Beneficiaries or Consents**. This Agreement is not intended, and shall not be construed: (a) as a dedication to the public of any interests in the Developer Improvements described in this Agreement, (b) to give any member of the public or any person, entity, or party other than as provided in this Agreement, any right whatsoever in this Agreement; or (c) to require any consent or other action of any third-person, other than as expressly provided in this Agreement.

11. **Severability**. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable Laws. If any provision of this Agreement or the application of such provision to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain expressed in this Agreement, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12. **Compliance Certificate**. Upon the written request of the Developer or the City, or the holder of any first lien deed of trust or first lien mortgage on any such parcel, any such owner shall execute, have acknowledged and deliver a certificate stating whether, to the knowledge of the signatory party, the other party is otherwise in compliance with this Agreement.

13. **Waiver**. Any provision of this Agreement may be waived only by written document executed by the party against which such waiver is sought. Neither the failure of a party to complain of any violation of this Agreement, regardless of how long such failure continues, nor the failure of a party to invoke (or the election by a party not to invoke) any right, remedy or recourse for a violation of this Agreement, shall waive the rights, remedies and recourses of the party with respect to such violation. No waiver by a party of any provision of this Agreement shall be deemed to be a waiver of any other provision in this Agreement.

14. **Rights Cumulative**. All rights, powers and privileges conferred hereunder shall be cumulative and in addition to, and not to the exclusion of, those provided at law or in equity.

15. **Performance of Government Functions**. Nothing contained in this Agreement

shall be deemed or construed to in any way to stop, limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions, including the power of eminent domain.

16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be considered as one and the same instrument.

17. **Headings.** The headings in this Agreement are for convenience only and shall in no way define or limit the scope or content of any paragraph, section and sub-section of this Agreement and shall not be considered in any construction or interpretation of this Agreement or any part in this Agreement.

18. **Singular/Plural.** Plural and singular terms shall be interpreted as to their most logical usage in the Agreement

19. **Notice.**

a. All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, email, or certified United States mail, return receipt requested, addressed as follows:

If to the Developer: Flip 25, LLC
Amaan Fazal
1 South 376 Summit Avenue
Court A – Suite 2B
Oak Brook Terrace, IL 60181
Fax: 630-678-1187
Email: amaanf@fdngroup.com

With a copy to: Murad Fazal
1 South 376 Summit Avenue
Court A – Suite 2B
Oak Brook Terrace, IL 60181
Fax: 630-678-1187
Email: muradf@fdngroup..com

If to the City: Corporation Counsel
City of Aurora
44 East Downer Place
Aurora, Illinois 60507
Email LawDept@aurora.il.us

City of Aurora
Public Works Director/City Engineer
44 East Downer Place
Aurora, IL 60507
Fax: 630/256-3209
Email: EngGenMail@aurora.il.us

b. Change of Address; Date Notice Deemed Given. A change of mailing address, fax number, email address or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered, sent by fax or email. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the City and the Developer have each executed this Agreement under seal by their respective duly authorized agents, managers, or officers as of the day and year first above written.

CITY OF AURORA, ILLINOIS
A Municipal Corporation

By _____
Mayor

ATTEST:

City Clerk

ACKNOWLEDGMENT

State of Illinois)
) SS
County of _____)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that _____ and _____, personally known to me to be the Mayor and City Clerk of the City of Aurora, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the City Council of said Illinois home rule municipal corporation, as their free and voluntary acts, and as the free and voluntary act and deed of said Illinois home rule municipal corporation, for the uses and purposes set forth in this Agreement.

GIVEN under my hand and official seal, this ____ day of _____, 2024.

SIGNATURES CONTINUE ON FOLLOWING PAGES

IN WITNESS WHEREOF, the City and the Developer have each executed this Agreement under seal by their respective duly authorized agents, managers, or officers as of the day and year first above written.

Flip 25, LLC.

An Illinois Limited Liability Company

By *Murad Fazal*
Name *Murad Fazal*
Its: *Managing Member*

ACKNOWLEDGMENT

State of Illinois)
County of *DuPage*) SS

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Murad Fazal, personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act of Flip 25, LLC, for the uses and purposes set forth in this Agreement.

GIVEN under my hand and official seal, this *12* day of *July*, 2024.

Ali Khawaja

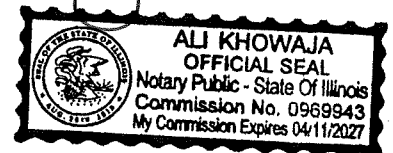


Exhibit A

Exhibit A- City Public Right of Ways ("Easement Area")



Exhibit C- Final Plan

