

**ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT
AMONG THE SUGAR LAND 4B CORPORATION
AND FIRST COLONY MALL, LLC**

RECITALS:

WHEREAS, the City of Sugar Land adopted an economic development sales tax and created the Sugar Land 4B Corporation (the “SL4B”) to promote economic development activities as authorized by Chapters 501 through 505 of the Texas Local Government Code; and

WHEREAS, on or about September 18, 2024, the Board of Directors (“Board”) of the SL4B approved Resolution No. SL4B-R-24-18, adopting a corporation policy for an SL4B commercial redevelopment and reinvestment grant program (the “Program”); and

WHEREAS, First Colony Mall, LLC (“Company”) has applied for a Reimbursement Incentive (as defined below) under the Program; and

WHEREAS, the SL4B has determined that Company’s Application is for a Qualifying Project that includes Qualifying Expenditures; and

WHEREAS, the SL4B and Company wish to enter into this Agreement providing for the payment of a Reimbursement Incentive to Company in consideration of Company completing Qualifying Expenditures as part of the Qualifying Project; and

NOW THEREFORE, for and in consideration of the mutual premises and promises contained herein, and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, the SL4B and Company do hereby agree, covenant, and contract as set forth below:

AGREEMENT:

The SL4B and Company agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein have the meaning assigned them in the Program. In this Agreement:

Act means the Development Corporation Act, codified in Chapters 501 through 505 of the Texas Local Government Code.

Agreement means this Economic Development Performance Agreement.

City means the City of Sugar Land, Texas.

Company means First Colony Mall, LLC.

Completion Date means the date on which Company completes construction of the Project.

Employee means a person who:

- (a) Is a direct employee of Company, Property Manager (on behalf of the Company) or a Tenant; and
- (b) Regularly works at least 35 hours a week for the Company, Property Manager (on behalf of the Company), or a Tenant at the Lifestyle Center, excluding time taken for holidays, vacations, sick leave, or other regular leave.

Lifestyle Center means the three blocks of outdoor retail shops and restaurants located between the main Mall entrance located on the northeast side of the Mall and that portion of the Mall ring road adjacent to Sugar Land Town Square and the Market at Town Center.

Mall means the First Colony Mall, located at 16535 Southwest Fwy, Sugar Land, Texas 77479.

Program means the SL4B Commercial Redevelopment and Reinvestment Grant Program, created by this Resolution No. SL4B-R-24-18.

Project means the public play area and seating enhancements to be installed in the Lifestyle Center at the Mall, adjacent to Little Woodrow's, The Cheesecake Factory, The Juicy Crab, Aki Sushi, Dimassi's, and Grimaldi's, as shown on the Play Area and Seating Enhancement Project Exhibit A attached hereto.

Property Manager means the property manager of the Mall, Brookfield Properties Retail Inc. or its affiliate, which is an affiliate of the Company.

Qualifying Improvements means those portions of the Project eligible for reimbursement under Section 505.152 of the Act, as may be amended, consisting of the improvements specifically listed in the attached Exhibit A, which is incorporated into this Agreement.

Reimbursement Incentive means the funds the SL4B pays to the Company under this Agreement, towards those portions of the Project that consist of Qualifying Improvements, excluding permitting fees and sales tax.

Reporting Year means the twelve month period following the Completion Date, beginning on the Completion Date and ending twelve months thereafter.

SL4B means the Sugar Land 4B Corporation, a non-profit economic development corporation created by the City as authorized by then section 4B of the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Art. 5190.6, currently codified as Chapters 501 through 505, Tex. Local Gov't Code, as amended.

Tenant means a person or entity that has leased space from the Company at the Lifestyle Center.

2. SL4B Findings. By approval of this Agreement, the Board finds:

(a) That a portion of the expenditures made by the SL4B are required or suitable for public park purposes and events, parks and park facilities, open space improvements, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the listed items (Sec. 505.052, Tex. Local Gov't Code); and

(b) That this Agreement complies with the requirements of Section 501.158, Tex. Local Gov't Code, that any direct incentives provided to a business enterprise requires a written performance agreement that includes:

- (1) A schedule of additional payroll or jobs to be created or retained;
- (2) The capital investment to be made; and
- (3) The terms of repayment upon default.

3. Company Obligations.

(a) Construction Commencement. Company must begin construction within six (6) months of the Effective Date. Failure to commence construction on or before that date may result in the termination of this Agreement, with neither party having any further obligations hereunder. If the SL4B elects to terminate this Agreement for Company's failure to commence construction by the required date, the SL4B will notify Company of the same in writing. Except for termination of this Agreement, there shall be no other remedy to the SL4B or claim against the Company for failure to commence construction by that date.

(b) Completion of Project. To qualify for the Reimbursement Incentive payment:

- (1) Within one (1) year from the date the notice to proceed is issued by Company to its general contractor for the Project, the Company must complete construction of the Project, including the Qualifying Improvements, in compliance with this Agreement and the City's ordinances; and
- (2) No later than thirty (30) days following the Completion Date, the Company must submit to the SL4B a letter confirming the Completion Date.

(c) Project.

- (1) By the Completion Date, the Company will have spent at least \$360,000.00 on materials and services in the design and for the construction of the Project, including at least \$72,000.00 on the Qualifying Improvements.
- (2) No later than 60 days following the Completion Date, the Company must submit to the SL4B receipts and invoices showing that the Company has spent at least \$360,000.00 on materials and services in the design and for the construction of the Project, including at least \$72,000.00 on the Qualifying Improvements.

(d) Jobs Creation and Retention; Reimbursement.

- (1) Required Employees. Beginning on the Completion Date, and continuing until at least twelve (12) months thereafter, the Company or Property Manager on behalf of the Company will create and maintain at least ten (10) Employees at the Lifestyle Center, and/or will have one or more Tenants with a total of 10 Employees at the Lifestyle Center. No later than 60 days following the Completion Date the Company must submit to the SL4B documents acceptable to the SL4B showing that the Company, or Property Manager on behalf of the Company, and/or one or more of its Tenants has created or retained a collective total of at least 10 Employees at the Lifestyle Center.
- (2) Reimbursement for Failure to Maintain Required Employees. If the Company, Property Manager on behalf of the Company, and/or its Tenants fail to maintain the minimum Employees at the Project for the Reporting Year, as required by Section 3(d)(1) above, the SL4B may not declare an event of default if the Company, within 60 days of the end of the Reporting Year makes a reimbursement payment to the SL4B in an amount determined as follows:
 - A. Using the actual number of Employees maintained compared to the number of Employees required in Section 3(d)(1), calculate the percentage decrease below the number of Employees required, using the average number of Employees maintained in the Reporting Year.
 - B. Multiply that percentage decrease by one-half (1/2) of the total incentive payment of actually paid to Company under this Agreement.
 - C. Multiply that amount by 2.5% to obtain the amount of the reimbursement payment; and
 - D. Add on interest at the City's weighted average yield of its investment portfolio from the date the SL4B made the Reimbursement Incentive payment to the Company to the date of the Company's repayment.
- (3) No Offset for Company Exceeding Required Employees. If, for the Reporting Year, the actual number of Employees exceeds the number required by Section 3(d)(1), the number of Employees that exceed the number of required Employees may not be credited against or used to offset any reimbursement based on number of Employees.

(e) Initial Reports and Reimbursement Package. Within three (3) months of the Completion Date, Company must submit the following to the SL4B in order to be eligible for the Reimbursement Incentive:

- (1) The information required under Sections 3(b)(2), 3(c)(2), and 3(d)(1) above;
- (2) A reimbursement package that includes:

- A. Copies of all permits required to be obtained for the construction or installation of the Project;
- B. Copies of receipts and sufficient supporting documentation showing that all contractors and/or materials have been paid in full for their work on the Project. Documentation may include receipts, invoices, cancelled checks and/or bank statements;
- C. Copies of receipts and sufficient supporting documentation showing the amount paid for Qualifying Improvements. Documentation may include receipts, invoices, cancelled checks and/or bank statements;
- D. A letter from the Company warranting that the Project has been completed according to the requirements of this Agreement; and
- E. Detailed color photographs of all completed Qualifying Improvements.

(f) Ongoing Reports; Inspections.

- (1) Apart from the initial reporting requirements in Sections 3(b)(2), 3(c)(2), and 3(d)(1) above, the Reporting Year for reporting and inspection requirements is as defined above.

- A. Within 60 days following the end of the Reporting Year the Company will certify to the SL4B that it has complied with the terms of this Agreement and provide sufficient written information, records, and documents, to support its certification of compliance.

- (2) Upon the SL4B's written request, the Company will promptly provide to the SL4B any additional information reasonably necessary for the SL4B to determine if the Company has complied with this Agreement.

- (3) The Company will allow the City access to the Project site during regular business hours to verify that the Company is complying with this Agreement. The City will be reasonable in exercising this access right.

- (4) Any documentation required to be submitted to the SL4B under this Agreement shall be submitted to the SL4B as part of one complete package and not on a piecemeal basis. The SL4B has no obligation to begin its review until and unless all documentation has been received.

(g) Images. Company grants the SL4B and/or the City of Sugar Land the right to use, for any lawful purpose, any photographs or video footage taken of the Project, owned by Company and to which Company has the authority to grant such permission.

(h) Compliance with Laws. The Project must conform to all applicable building codes, zoning ordinances, and all other state, federal, or local laws, ordinances, and regulations.

(i) Insurance. Company will maintain insurance in amounts and types sufficient to cover the Project and to protect the SL4B from any potential liability related in any manner to their obligations under this Agreement.

4. SL4B Economic Reimbursement Incentive Payment.

(a) Reimbursement Incentive Payment. Subject to other provisions of this Agreement, the SL4B agrees to pay one Reimbursement Incentive payment of \$72,000.00 to the Company. City of Sugar Land staff will review the information submitted by Company under Sections 3(e)(1)-(2) above for completeness within thirty (30) days of receipt. If any information is missing, the SL4B will notify Company in writing and provide Company an additional thirty (30) days to provide any missing or incomplete information. If the required documentation is not complete at the end of that additional thirty (30) days, this Agreement will automatically terminate and the SL4B will have no obligation to pay the Reimbursement Incentive. If the required documentation is determined to be complete, the SL4B shall pay the Reimbursement Incentive to the Company within thirty (30) days of the determination of completeness.

(b) If the final costs of the Qualifying Improvements are less than the original amount approved, the SL4B will have the right to reduce the Reimbursement Incentive accordingly.

(c) Survival. The repayment of all or a part of the Reimbursement Incentive provided for in this Agreement survives termination or expiration of this Agreement. The Company's obligations that must be performed after expiration of this Agreement survive expiration of this Agreement.

(d) The SL4B is funding this Agreement exclusively from economic development sales taxes it receives under the provisions of the Development Corporation Act of 1979, as amended (currently codified as Chapters 501 through 505, Tex. Local Gov't Code). Should any legal impediment arise during the term of this Agreement, including a change in law, that prevents or prohibits the SL4B from making future incentive payments under this Agreement, either party may terminate this Agreement by written notice to the other party (specifying the date of termination) without further liability to the other party.

5. Effective Date. This Agreement is effective on the later date of the two dates signed by the parties below (such date, the "Effective Date").

6. Term and Termination

(a) Unless terminated earlier as allowed in this Agreement, this Agreement begins on the Effective Date and terminates on the Completion Date.

(b) This Section 6(b) is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Company will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Company is convicted

of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Section 6(b) and the city manager will send the Company written notice that the Company has violated this Section 6(b) and that this Agreement will terminate 30 days from the date of such notice.

(c) Either party may terminate this Agreement during its term as provided in this Section 6 if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing. If the party in default fails to cure the default within 60 days of the date of the notice, the party giving the notice may terminate this Agreement by written notice to the other party, specifying the date of termination.

(d) No party may be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic or pandemic, act of government, its agencies or offices, or any other cause beyond the control of the parties during the time, but only for so long as the event of force majeure reasonable prevents performance.

(e) Company Reimbursement Payments for Breach of this Agreement. If the SL4B terminates this Agreement because of the Company's breach of any provision as permitted by this Agreement, the Company must, within 60 days following termination, reimburse the SL4B for the Reimbursement Incentive payment the SL4B made to the Company (if any) under this Agreement. The reimbursement payment includes interest on each SL4B payment at the City's weighted average yield of its investment portfolio from the date the SL4B made the payment to the Company to the date of the Company's repayment. The Company's obligation to reimburse the SL4B payments made to Company if the Company breaches this Agreement survives termination of this Agreement.

7. Indemnification. IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE COMPANY, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND THE SL4B ASSUMES NO RESPONSIBILITY OR LIABILITY TO THIRD PARTIES IN CONNECTION THEREWITH, AND COMPANY AGREES TO INDEMNIFY AND HOLD HARMLESS THE SL4B FROM ANY SUCH RESPONSIBILITY OR LIABILITY. IT IS FURTHER UNDERSTOOD AND AGREED AMONG THE PARTIES THAT THE SL4B, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND COMPANY ASSUMES NO RESPONSIBILITY OR LIABILITY TO THIRD PARTIES IN CONNECTION WITH THEREWITH, AND, TO THE EXTENT PERMITTED BY LAW, THE SL4B AGREES TO INDEMNIFY AND HOLD HARMLESS THE COMPANY FROM ANY SUCH RESPONSIBILITY OR LIABILITY

8. Force Majeure. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed, disrupted, or becomes impossible by reason of war, civil commotion, acts of God, strike, epidemic or pandemic, accident, inclement weather, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any

such circumstance is similar to any of those enumerated or not, 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 design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

9. Economic Uncertainties. Subject to the requirement in Section 3(a) above that Company must begin construction within six (6) months of the Effective Date:

(a) The parties acknowledge that uncertainties associated with market and economic conditions and other factors may alter and affect the scope and timing of the Project. The timing, scope and composition of the Project shall be determined solely by the Company. Notwithstanding the foregoing, the Company acknowledges that the Redevelopment Incentives shall only be payable in accordance with the terms of this Agreement.

(b) The decision to proceed or to forebear or delay in proceeding with the implementation or development of the Project or any improvements therein shall be in the sole discretion of the Company.

(c) The failure of the Company to proceed with development of any improvements in the Project shall not constitute an event of default or give rise to any liability, claim for damages, or cause of action against the Company by the SL4B, except as otherwise expressly set forth herein.

10. Miscellaneous Provisions.

(a) Remedies Cumulative. The rights and remedies provided in this Agreement or under other laws are cumulative and the exercise of any particular right or remedy does not preclude the exercise of any other right or remedy.

(b) Law Governing and Venue. The laws of the State of Texas govern this Agreement and no lawsuit may be prosecuted on this Agreement except in a court of competent jurisdiction located in Fort Bend County, Texas.

(c) Notices. Any notice required to be given by one party to the other parties must be given in writing addressed to the parties to be notified at the addresses set forth below: (1) by delivering the notice in person, (2) by depositing the notice in the U. S. Mail, certified or registered, return receipt requested, postage prepaid, (3) by depositing the notice with Federal Express or another nationally recognized courier service for next day delivery; or (4) by sending the notice by email with confirming copy sent by mail. Notice deposited in the U.S. Mail is deemed effective three business days following the date of deposit. Notice given in any other manner is effective when received by the party to be notified. For the purposes of notice, the addresses of the parties to whom notice is to be given, until changed by given notice to the other as provided herein, is as follows:

SL4B: General Manager
Sugar Land Development Corporation
c/o Director of Economic Development
City of Sugar Land
P. O. Box 110
Sugar Land, Texas 77487-0110
Email: ecodev@sugarlandtx.gov

With a copy to: City Manager
City of Sugar Land
P. O. Box 110
Sugar Land, Texas 77487-0110
Email: citymgr@sugarlandtx.gov

Company: First Colony Mall, LLC
Attn: Shenea Bankhead
16535 Southwest Freeway, Suite 1
Sugar Land, Texas 77479
Email: shenea.bankhead@bpretail.com

With a copy to: First Colony Mall, LLC
c/o Brookfield Properties
350 North Orleans Street, Suite 300
Chicago, Illinois 60654
Email: generalcounsel@bpretail.com

(a) Assignment. Except as provided herein, the Company may not assign this Agreement to any other person or entity unless the SL4B consents in writing to the assignment.

(b) City Authority. The City's city manager or any employee authorized by the city manager is authorized to act on behalf of the SL4B in the administration or enforcement of this Agreement.

(c) Severability. The provisions of this Agreement are severable and the invalidity of any part of this Agreement shall not affect the validity of the remainder of this Agreement.

(d) Captions. The titles, captions and headings contained in this Agreement are inserted in this Agreement only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of this Agreement.

(e) Retention of Records. The Company must retain all records, documents, and information made available to the SL4B for review under this Agreement for a period of four years from the date the expiration or termination of this Agreement.

(f) No Recording. Neither the SL4B nor the Company may record a copy of this Agreement or any memorandum hereof.

(g) Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A – List of Qualifying Improvements

[Signature page follows]

SUGAR LAND 4B CORPORATION

FIRST COLONY MALL, LLC

Kirt Kurchof, President

By: Marjorie Zessar
Name: Marjorie Zessar
Title: Authorized Signatory

Date: _____

Date: March 6, 2025

ATTEST:

Linda Mendenhall, City Secretary

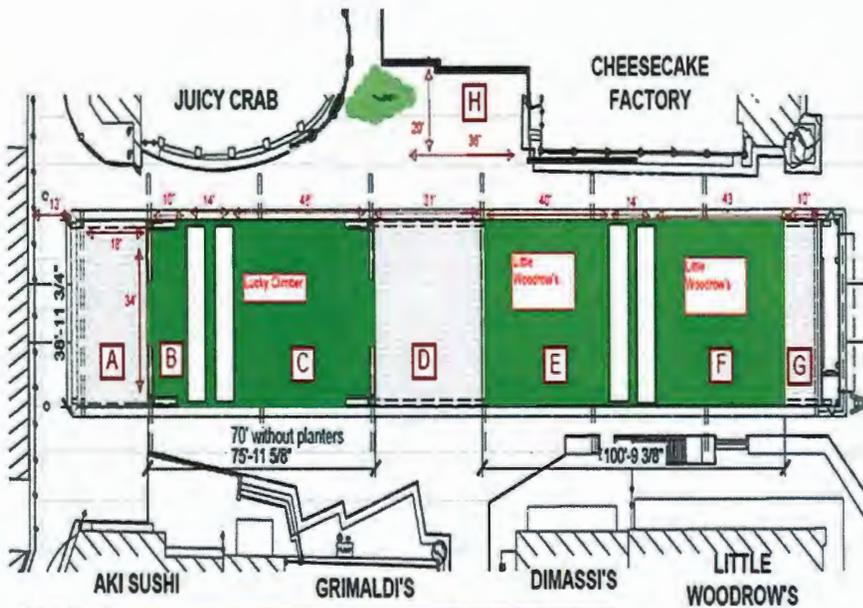
APPROVED AS TO FORM:

EXHIBIT A

Qualifying Improvements

- Company will construct and install (or cause to be constructed and installed) either the Luckey Playground or the Lonestar Creation playground, but not both.

(See Attached Play Area and Seating Enhancement Project Exhibit)



Play Area and Seating Enhancement Project

Stimulate Economic Impact & Create Public Spaces

The proposed project at First Colony Mall aims to create a unique play area and additional seating on the mall's lawn, surrounded by nearby restaurants. This development will enhance the shopping experience by providing a dynamic, family-friendly environment that boosts foot traffic and encourages longer visits, directly benefiting businesses within the center, including retail stores and dining options. By attracting families, especially those with young children, the play area will stimulate increased consumer spending and elevate the mall's reputation as a go-to destination for both shopping and recreation. This investment is expected to foster lasting community transformation, offering residents a vibrant space to relax, socialize, and enjoy time with their children, while simultaneously supporting the growth of local businesses.

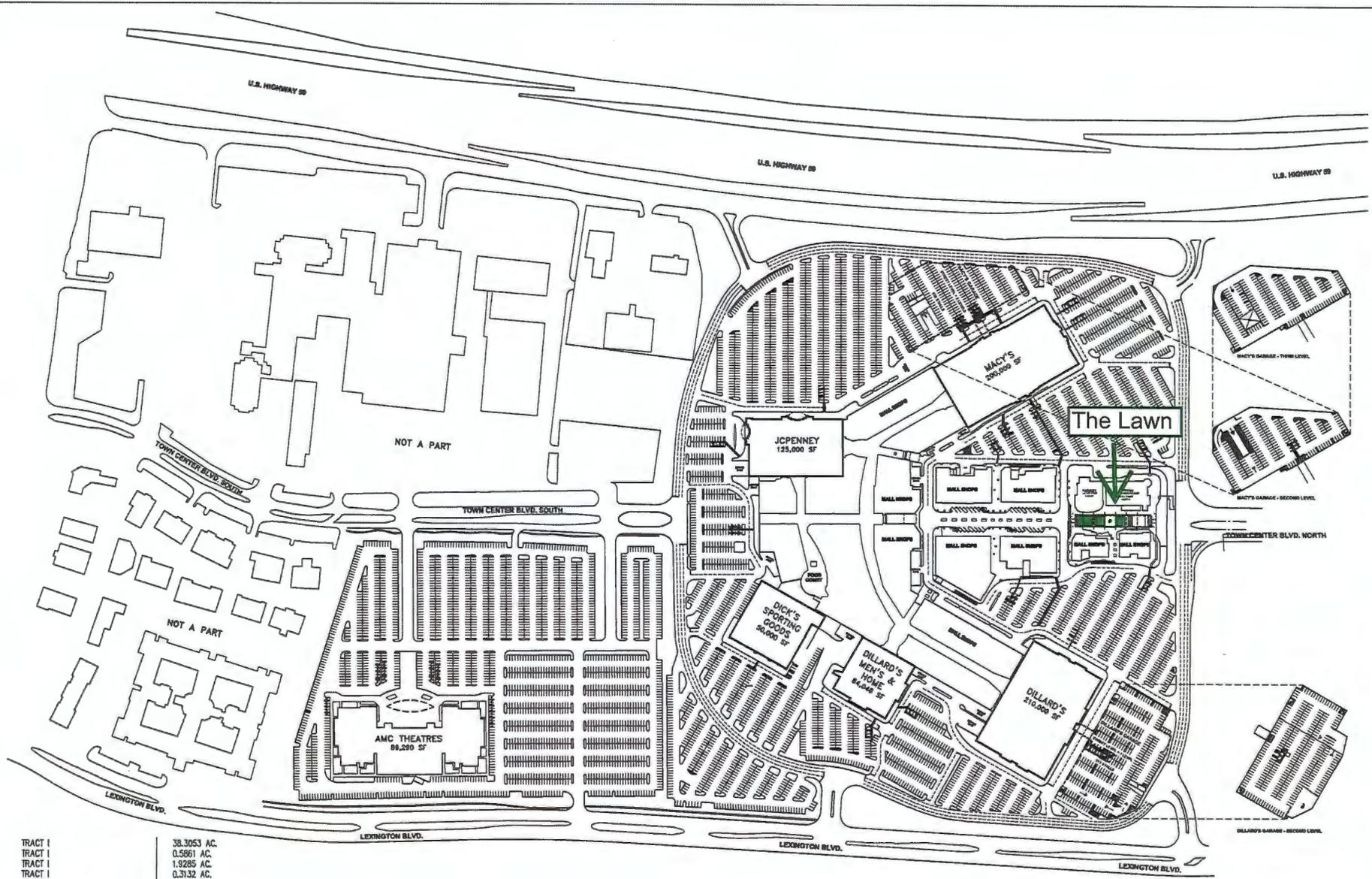
Scope of Work

Development of Play Area and Additional Seating at Mall Lawn.

This project involves the design, construction, and installation of a new play area at the mall lawn, as well as additional seating for customers at the surrounding restaurants. The goal is to create a vibrant, family-friendly environment that enhances the shopping experience, increases foot traffic, and improves the overall atmosphere of the area for shoppers, families, and restaurant patrons.



FIRST COLONY MALL
16535 SOUTHWEST FREEWAY, SUITE ONE



TRACT I	39.3053 AC.
TRACT II	0.5561 AC.
TRACT III	1.9285 AC.
TRACT IV	0.3132 AC.
TRACT V	2.3211 AC.
TRACT VI & X	2.4665 AC.
TRACT VII	2.141 AC.
TRACT VIII - EASEMENT	0.6923 AC.
TRACT IX	0.
TRACT X	0.205 AC.
TRACT XI	26.0228 AC.
DILLARDS	0.0445 AC.
DILLARDS	13.4144 AC.
DILLARDS PROPERTIES	5.2548 AC.
JCPENNEY	7.2121 AC.
MACY'S TX I LP	13.3235 AC.
TOTAL	114.4311 AC.



TRACT VIII SHOWN ON THIS SITE PLAN IS NOT TO BE CONSIDERED AS PART OF THE PROJECT UNLESS SPECIFICALLY INDICATED OTHERWISE. THE PROJECT IS NOT TO BE CONSIDERED AS PART OF THE PROJECT UNLESS SPECIFICALLY INDICATED OTHERWISE. THE PROJECT IS NOT TO BE CONSIDERED AS PART OF THE PROJECT UNLESS SPECIFICALLY INDICATED OTHERWISE.

PROJECT NO: 3808
DRAWN BY: FLG
© Brookfield Property RE

DESCRIPTION

SITE PLAN

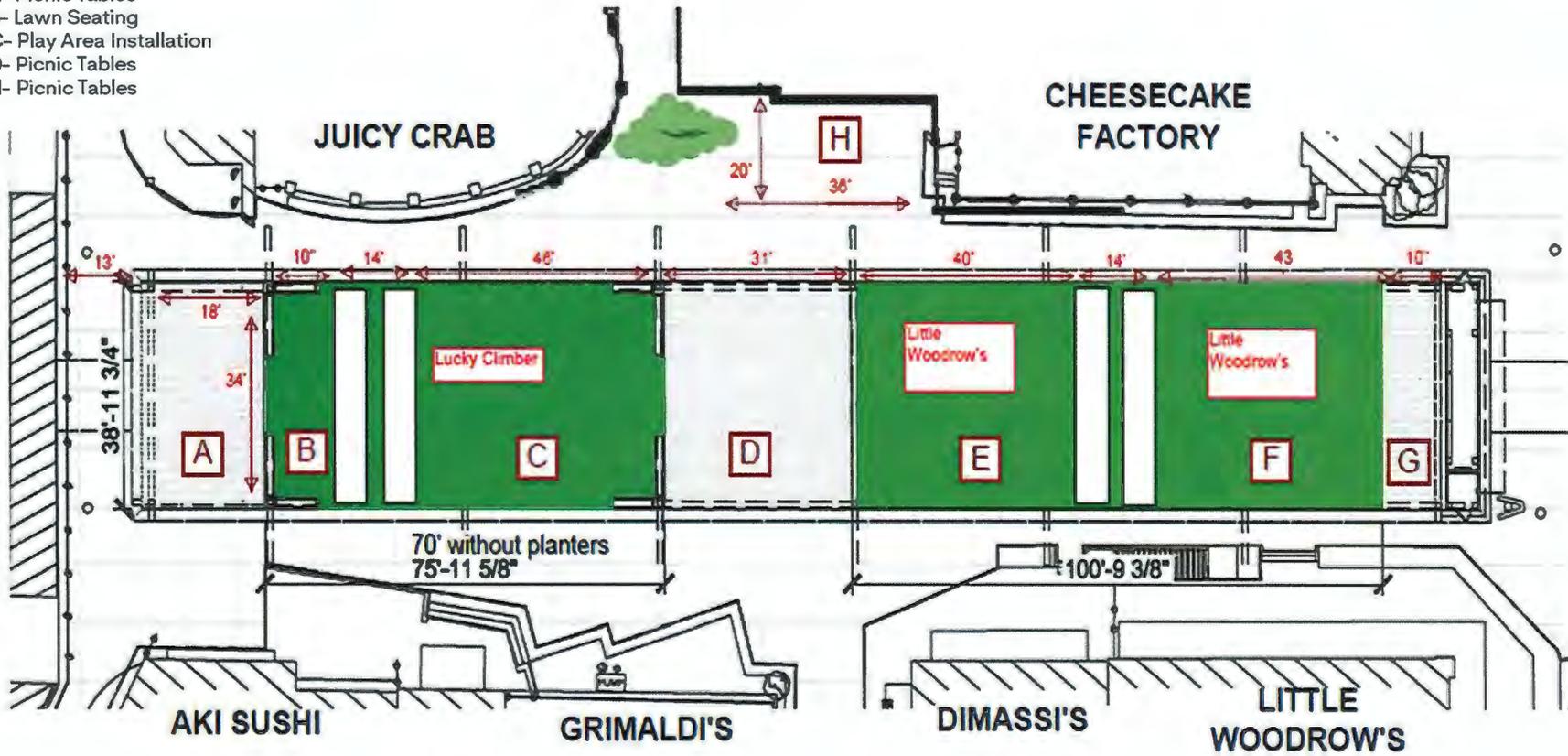
SHEET NO.

SP1

DATE: May 2022

PROJECT LOCATION

- A- Picnic Tables
- B- Lawn Seating
- C- Play Area Installation
- D- Picnic Tables
- H- Picnic Tables



LUCKEY CLIMBER



LONESTAR RECREATION





Shenea Bankhead
Brookfield Properties - First Colony Mall
16535 Southwest Freeway, Suite 1
Sugar Land, TX 77479

December 4, 2024

This letter contains Luckey® LLC's proposal to Brookfield Properties - First Colony Mall (Client) for fabrication, manufacturing and set-up services for (1) Luckey climber "Nunchucks" (the "project" or the "sculpture"). This letter, including the Scope of Services, Compensation, Milestone Payment Schedule, Terms and Conditions, constitutes the agreement of the parties and unless signed by both parties, this proposal is valid for 60 days from the date.

I. **Scope of Services:** Luckey will provide fabrication, manufacturing and set up for (1) one Luckey Climber including:

- attending conference calls to begin the work;
- working with client to understand and establish the design parameters, logistics of location and key adjacencies for the climber;
- fabricating and manufacturing the climber components based on the approved design ("Nunchucks");
- providing set-up services:
 - i. unload and unpack the climber from its truck/crate(s);
 - ii. erecting the structural frame and climbing petals;
 - iii. stitch the safety mesh, confirm the climber aesthetics are correct (finish);
 - iv. coordinate with client's architect and operations team;
- provide owner's manual.

Assumptions:

- One standard flatbed truck is required for shipping the climber.
- Luckey will coordinate with Client's chosen shipping company to ship the climber from Luckey factory in New Haven; Luckey will load the climber onto the truck.

II. **Compensation:** For its performance of the work, Client will pay Luckey the amount of THREE HUNDRED FIFTY THOUSAND (US\$ 350,000.00) plus reimbursable expenses as described below and in the Terms and Conditions. The fees in this proposal do not include equipment rentals, permits, bond, site work/footings, shipping (Incoterms EXW) and all taxes.

Expenses for Luckey installation team air & ground travel, lodging and meals are reimbursable, as described here and in section V. Terms and Conditions. Luckey team lodging and meal expenses shall be billed Per Diem as a reimbursable based on monthly Federal GSA rates for the county in which the work is performed, at the time of installation (www.gsa.gov).

- Two (2) Luckey installation technicians will be on site for the set up (labor paid by Luckey).
- Set up is estimated at 7-10 days.

III. Milestone Payment Schedule:

A. Start - Materials Mobilization/Fabrication fee - Due upon signing this agreement. \$ 150,000.00

Payment should be accompanied by all available architectural and engineering drawings, Geotech report and other available information for the intended site.

B. Substantial Completion - Components, frame, mesh are being prepared for shipping and installation. Luckey to provide digital images. This fee and all previous fees must be received prior to Load on. \$ 150,000.00

C. Shipping "Load on" fee - This fee and all previous fees must be received prior to Load on. \$ 50,000.00

This contract is not subject to retainage.

TOTAL: \$ 350,000.00

Payment Options:

Check

Payable to: Luckey, LLC
Mail to: P.O. Box 871
Killingworth, CT 06419

Wiring

Bank: Wells Fargo Bank, NA
Bank SWIFT BIC: WFBUS6S
Bank Account #: 3676029907
ABA/RTN: 121000248
Full Name: Luckey LLC
Full Address: P.O. Box 871
Killingworth, CT 06419

ACH/EFT

Bank: Wells Fargo Bank, NA
Bank Account #: 3676029907
ACH routing #: 021101108
Full Name: Luckey LLC
Full Address: P.O. Box 871
Killingworth, CT 06419

Notices: All Notices regarding this Agreement shall be sent to the persons and addresses indicated below (the "Representative"). The Representative may be changed by written notice to the other party. The Representative may rely on, and will be bound by, written approvals and communications (including any oral notice which is confirmed in writing) given by a Representative.

For Luckey	For Client
Spencer Luckey Luckey LLC PO Box 871 Killingworth, CT 06419 Ph: +1 475 441 7468 Email: spencer@luckeyllc.com	Shenea Bankhead Brookfield Properties - First Colony Mall 16535 Southwest Freeway, Suite 1 Sugar Land, TX 77479 Ph: 281 415 7858 Email: shenea.bankhead@bpretail.com

IV. Fabrication and Delivery Schedule: The work scheduled is estimated as follows and begins upon Luckey's receipt of this signed agreement and payment as outlined in Section III. Milestone Payment Schedule.

Luckey climbers are hand built in the order our agreements are received. Once we receive a signed agreement and startup fee, Luckey will provide an updated schedule estimate. Presently, all climbers have a 12-month lead time.

- A. Materials Mobilization/Begin Fabrication and Manufacturing Month 1
- B. Substantial Completion Month 9
- C. Shipping "load on" Month 11

If you agree with the terms of this proposal, please indicate your acceptance by signing below.

Sincerely,

 Spencer Luckey
 President, Luckey, LLC

Agreed to:

By: _____
 Name: _____
 Title: _____
 Date: _____

V. Terms and Conditions

Payments: Payments are due Luckey in U.S. currency within 30 days after rendering of invoices, unless otherwise agreed or set forth in the payment schedule. Luckey shall be entitled to suspend services if payment is overdue upon 7 days written notice. Unpaid invoices shall bear interest at two points above the *Wall Street Journal* prime rate. Luckey's compensation and reimbursable expenses, as described in the Agreement, shall be equitably adjusted by a Change Order, as described below, if its services are suspended, delayed, extended, or otherwise materially changed due to causes outside of its control.

Changes in the Work: The Client may order or approve changes in the work within the general scope of the Agreement, consisting of additions (including site visits beyond those listed herein), deletions or other revisions, and the compensation and schedule will be adjusted accordingly, as described in a written Change Order signed by the Client and Luckey. If concealed or unknown physical conditions are encountered at the site, or if Luckey is required to engage union labor at wage rates and other costs above those anticipated in its proposal, the compensation and schedule shall be equitably adjusted by Change Order prior to the commencement of work affected by such changes. The cost or credit to the Client from a change in the work shall be determined by mutual agreement of the parties set forth in a Change Order prior to the execution of the change.

Additional Services: For services performed at the Client's request which are outside of the scope of basic services described in the Agreement, including without limitation services in connection with changes made at the Client's request which are inconsistent with prior approvals by the Client or which are otherwise required by causes outside of Luckey's control, the compensation shall be a mutually agreed-upon lump sum, or hourly at the standard rates for Luckey's own personnel, and at 1.2 times the amount billed to Luckey by its engineers and other consultants. Trips beyond those listed in the proposal shall be Additional Services.

Reimbursable Expenses: Expenses are not included in this proposal and are outlined here and in section III. of this proposal. Reimbursable expenses may include: (a) premium costs for additional insurance required by the Client; (b) presentation models and/or third-party renderings requested by Client; (c) if in US Luckey shall apply Federal GSA standard expense rates for the state/county the work is in, at the time of installation; (d) Luckey installation team ground travel as a reimbursable expense, may include Uber, or another web or App based transportation service, rental car or taxi.

Client's Responsibilities: The Client shall be responsible for all site work, any modifications to the base building structure, and any provision of electrical service or other site utilities required to install the Project. Concrete footings and additional site work costs are not included in Luckey scope of work. Such Client work shall be performed in a timely manner, so as not to adversely affect the schedule described below. Client shall be responsible for all costs and matters relating to transport of the project from Luckey's workshop in New Haven, CT to the project site, including all costs relating to delivery of materials and prefabricated components, and the cost of shipping of Luckey tools back to Connecticut. The Client shall accept delivery of the Luckey shipping container and shall store said container within a reasonable proximity of the project installation area. The Client shall provide access to the project site necessary for Luckey to carry out its work. The Client shall provide all safety barricades and temporary protection. The Client shall provide a forklift, a crane, and a boom or scissors lift (and operator and rigger) for Luckey's use to complete the project. Client shall obtain and pay for all building permits and similar fees and approvals required for the project, including both for work by Luckey and for work separately performed by or for the Client. If the Client becomes aware of any fault or default in the project, the Client shall promptly notify Luckey. The Client shall be responsible for shipping costs (Incoterms EXW), taxes, legal fees, bond costs, the filing of and payment of all state and local, import, VAT, TUV, sales and use taxes. Fees paid and payments made to Luckey hereunder are exclusive of any state, local, or otherwise applicable sales, use, or similar taxes assessed with respect to such fees and payments. Such taxes, if applicable, shall be the responsibility of Client. If Luckey is required to directly pay or collect taxes related to such fees and/or payments hereunder or sales of any goods/services by Client, Client shall promptly reimburse Luckey for any amounts paid by Luckey or pay to Luckey any amount of such taxes required to be collected.

Ownership and Use of Documents: Luckey reserves the right to fine-tune the sculpture and will provide the Client with the necessary documentation/photographs to convey the changes prior to delivery. The drawings, specifications, physical models, and other documents prepared by Luckey (the "Instruments of Service"), and the copyright, moral rights, and all other intellectual property rights therein, shall remain the sole property of Luckey. Only upon completion of the project's fabrication, manufacturing and installation by Luckey, shall the Client receive a nonexclusive license to use the Approved Final Design Documents solely and exclusively for purposes of using and maintaining the sculpture, provided that the Client has substantially performed its obligations, including payment of all sums when due, under this Agreement. Designs and design documents by Luckey are not authorized for fabrication by a third party or others. The Client shall release, defend (at Luckey's option), indemnify, and hold harmless Luckey, its employees and consultants harmless from any and all claims, demands, suits, judgments, losses, damages, or expenses of any nature whatsoever, including reasonable attorneys' fees and disbursements, arising directly or indirectly out of any use of the Instruments of Service without Luckey's involvement, whether authorized or unauthorized. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

Credits, Use in Marketing: Luckey may use copies of the design or photographs of the sculpture in the promotion and marketing of its services and in the professional and general print and digital media. Luckey shall have reasonable access to the project for taking such photographs. The Client shall provide professional credit for Spencer Luckey in its publicity and any print or digital publication of the

sculpture. In all publicity and publications, the Client shall refer to the Project as a "Luckey Climber"; the Client shall not employ any other descriptive name or title with respect to the sculpture without the prior written consent of Luckey.

Insurance: Luckey shall procure and maintain appropriate insurance coverage in the form of commercial general liability (including but not limited to products liability and completed operations), worker's compensation insurance, employer's liability insurance, and automobile liability insurance. The Client will be listed as an additional insured on all policies except worker's compensation. Luckey, shall provide Certificates of Insurance for all insurance required hereunder to the Client upon request. Any additional insurance required by Client shall be paid for by Client.

Termination: The Agreement may be terminated by either party in case of substantial breach by the other, upon 7 days' written notice. In case of any termination, the Client shall pay Luckey for services performed and reimbursable expenses incurred to the date of termination in accordance with the Agreement, and reasonable costs and expenses incurred by Luckey as a direct result of such termination.

Indemnification; Limitation on Liability: To the fullest degree allowed by law, both Luckey and the Client agree to indemnify and hold harmless each other and their officers, employees, and subconsultants and subcontractors from and against third-party claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, provided that such a claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the sculpture itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by the negligent acts or omissions of the indemnifying party or anyone for whose acts it may be liable. Neither party shall be liable to the other for any indirect, special, or consequential damages, including lost profits.

Warranty: Luckey warrants that all work, materials, and equipment, including all component parts provided as part of the project, will be free of defects for a minimum of one year from the date climber is open to public for use. This warranty excludes damage or defect caused by abuse, alterations to the work not executed by Luckey, improper or insufficient maintenance, improper operation, paint touch up, or normal wear and tear under normal usage. Luckey agrees to remedy, by repair, replacement, or otherwise, any substantial defects of which it receives written notice within the one-year period at no cost to the Client. In the event of a warranty repair, The Client shall contact Luckey in writing, or by phone, to describe the problem. If the warranty issue can be corrected on site by client, Luckey will provide spare parts required at no cost to Client. If repair is required by Luckey within the warranty period, travel and team costs are included. If outside the warranty period, Client to provide reimbursable expenses including airfare, meals and lodging for the repair team. If the Client fails to notify Luckey within the one-year period and give it an opportunity to make the correction, the Client waives the rights to require correction by Luckey and to make a claim for breach of warranty. Such warranty shall apply separately from any manufacturer's warranties for any equipment or component parts provided as part of Luckey's work.

Dispute Resolution: The parties will initially attempt to resolve any dispute relating to this Agreement or the Project by mediation in New Haven, Connecticut, under the Construction Industry Mediation Procedures of the American Arbitration Association (AAA). Any claim that is not resolved by mediation will be decided by final and binding arbitration in New Haven, Connecticut, under the AAA's Construction Industry Arbitration Rules. No such arbitration shall include an additional person or entity not a party to the Agreement, except by written consent of both parties.

Disability & Force Majeure:

For purposes hereof, an event of "Force Majeure" will mean inclement weather, war, riot, terrorism, civil commotion, fire, casualty, strike, labor dispute, or the unforeseen act of any governmental authority. If the preparation or production of any Exhibit or the Project as a whole is materially hampered, interrupted or prevented due to an event of Force Majeure, any and all deadlines set forth in the approved production or delivery Schedule will be extended for a period equal to the duration of the event of Force Majeure, plus any additional time required to replace any deliverable items damaged as a result of the Force Majeure event.

Miscellaneous Provisions: The Agreement, including these Terms and Conditions, represents the complete and integrated agreement between the parties; supersedes all prior agreements between the parties relating to the project; may be amended only in writing; is binding upon the parties, their successors, assigns, and legal representatives; and shall be interpreted and governed in accordance with the laws of the State of Connecticut. If this document has been referenced to or incorporated into a general purchasing document provided by the client, in the event of a disagreement or dispute, the intent of this document shall prevail.



Lone Star Recreation of Texas, LLC.

10701 Corporate Drive Suite 390
Stafford, TX 77477

Phone: 281-970-9010

PROPOSAL

Quote # **12679**

Contact: Shenea Bankhead
Company: Brookfield Properties
Phone: 281-415-7858
Email: shenea.bankhead@bpretail.com

Ship To: Landscape Structures, Inc.
Certified Installer

Bill To: Brookfield Propoerties
16535 Southwest Fwy
Suite: 1
Houston, TX 77064

Installation Site: The Lawn at First Colony
Sugarland, TX

Design Number: 1192682-01-01

Date: 1/7/2025
Proposal Expires: 2/6/2025

Terms
INCO Terms: F.O.B. Manufacturing Plant
Estimated Mfg. Lead Time: TBD
Payment Terms:
Equipment: 30% Deposit; 70% N30 from Shipment
Installation: Based upon approved terms
Surface: Based upon approved terms

Proposal Prepared By
Contact: Amayrane Ponce
Phone: 281-970-9010
Email: Amayrane.Ponce@LoneStarRecreation.com

Sales
Contact: Ryan Cicatello
Phone: 281-970-9010
Email: Ryan.Cicatello@LoneStarRecreation.com

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED AMT
		The Lawn at First Colony		
1	Equipment	Smart Play (5-12 years) Volo w/Shade DB	\$ 104,669.00	\$ 104,669.00
1	Installation	Installation of Landscape Structures equipment referenced above by Manufacturer Trained and Certified CPSI Installer w/ 12 month labor warranty	\$ 47,101.00	\$ 47,101.00
1	Surface	Delivered & installed approx. 3,061sf w/ Flush Edge Finish DuraPlay Safety Surfacing 100% Specified Colors w/ Aromatic Binder and Design Subbase: 4" Stone Base Included Drainage: Included Dumpster: Included **Price does not include on-site testing, site security	\$ 144,955.00	\$ 144,955.00

By signing this proposal, the customer is agreeing to the scope of work and terms.

Accepted by Customer _____ Date _____

Print Name _____ PO/Ref. # _____ Title _____

EQUIPMENT	\$	104,669.00
INSTALLATION	\$	47,101.00
SURFACE	\$	144,955.00
FREIGHT	\$	4,500.00
SALES TAX		EXEMPT
TOTAL	\$	301,225.00

Pricing is for the above listed equipment only: NO installation, subgrade, drainage, additional contract terms, additions or deletion, change orders, insured addendum, off loading of equipment, storage of product, site security, retainage, or any applicable taxes, bonds, permits or freight are included unless listed as separate line items.

Individual line items invoiced according to Schedule of Payments. Freight charges will be included with initial invoice.

Tax Exemption Certificate must be supplied with order if applicable

Change orders, cancellation, and/or rescheduling of services will be subject to available schedule and payment for incurred time, expenses, freight, and/or fees.

LSRT reserves the right to apply payments to past due invoices first before applying payments to specific orders.

1.5% per month late payment fee will be applied for late payments

LSRT Terms and Conditions apply unless Subcontract is on file.

ESTIMATE

Customer: BROOKFIELD PROPERTIES

Customer PO: COM_0001

Project: First Colony Mall

Send Payments to:

FORMS+SURFACES
PO BOX 3625, PITTSBURGH, PA 15230-3625
Please provide invoice number on remittance.

Sold To:

BROOKFIELD PROPERTIES
HEADQUARTERS CHICAGO
GENERAL GROWTH PROPERTIES
350 NORTH ORLEANS SUITE 300
CHICAGO IL 60654-1607
United States

Bill To:

FIRST COLONY MALL, LLC
16535 SOUTHWEST FREEWAY,
SUITE 1
SUGAR LAND TX 77479
United States

Contact:

Phone:
Fax:

Item	Facility / Part / Rev / Description / Details		Quantity	Unit Price	Extended Price
001	SLTNO-136S Rev: NS PRODUCT: TONYO LITTER & RECYCLING RECEPTACLE	U/M: EA	9.0000	2,327.00	20,943.00
				Tax	1,727.80
002	906-00247 Rev: 000 TONYO LITTER & RECYCLING RECEPTACLE MOUNTING HARDWARE KIT (36G)	U/M: EA	9.0000	149.00	1,341.00
				Tax	110.63
003	SBRAT-72BPC Rev: NS PRODUCT: RATIO BENCH	U/M: EA	4.0000	2,287.00	9,148.00
				Tax	754.71
004	906-00248 Rev: 000 RATIO BENCH MOUNTING HARDWARE KIT	U/M: EA	4.0000	19.00	76.00
				Tax	6.27
005	SBRAT-72NPC Rev: NS PRODUCT: RATIO BENCH	U/M: EA	4.0000	1,684.00	6,736.00
				Tax	555.72
006	906-00248 Rev: 000 RATIO BENCH MOUNTING HARDWARE KIT	U/M: EA	4.0000	19.00	76.00
				Tax	6.27
007	SXHP Rev: 000 HANDLING & PACKAGING ONLY	U/M: EA	1.0000	3,182.46	3,182.46
				Tax	262.54
008	SXFRT Rev: 000 FREIGHT	U/M: EA	1.0000	2,869.07	2,869.07
				Tax	236.70

ESTIMATE

009	SXINSU	Rev: 000	U/M: EA	1.0000	574.80	574.80
	ADD FOR FOB DESTINATION				Tax	47.43

Total Items Price US\$ 44,946.33

Tax US\$ 3,708.07

Order Total US\$ 48,654.40

Deposit Required US\$ 24,327.21