

AGENDA

TIF Zone Meeting
August 17, 2015
Noon - City Hall
501 Sheppard Road
Burkburnett, TX 76354

Item 1. Chair: Call meeting to order.

Item 2. CONSENT AGENDA

A. Approval of Minutes: April 27, 2015

Item 3. Discuss and take any action necessary on agreement with Burkburnett NH Realty, LTD., for utility expansion in TIF Zone.

Item 4. Adjournment.

I, Janelle Dolan, City Clerk for the City of Burkburnett, Texas do hereby certify that I posted this agenda on the glass front door of the City Hall, facing the outside at 11:00 a.m. August 13, 2015 in compliance with the Open Meeting Act Chapter 551.



Janelle Dolan, City Clerk

Posted 8/13/2015 @ 11:00am

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the City Clerk's office at (940)569-2263 for further information.

MINUTES
TIF ZONE BOARD MEETING

The TIF Zone Board of Directors of the City of Burkburnett, Texas met in a regular called meeting on April 27, 2015 at 8:15 am in the Council Chambers of the City Hall, 501 Sheppard Road, Burkburnett, Texas. The meeting was open to the public with notice being given in compliance with the Open Meeting Act. The following were present:

TIF Zone Board Members: David Strayhorn, Chair, Bin Ellett, Vice-Chair, Mayor Carl Law and Darren Baber. Wichita County Representative: Commissioner Lee Harvey was not present.

Mike Whaley, City Manager, and Janelle Dolan, City Clerk, were in attendance.

Item 1. David Strayhorn, Chair called the meeting to order.

Item 2. Motion was made by Mayor Law seconded by Bin Ellett to approve the minutes from March 21, 2013. Motion carried unanimously.

Item 3. Mike Whaley, City Manager, addressed the Board and reported the City is requesting funds from the TIF Fund account to be released for the purpose of funding a portion of the Texas Alternative Transportation (TAP) Grant Proposal. Mr. Whaley stated these funds would be utilized to expand sidewalks within the TIF Zone. The overall proposal includes projects outside the TIF Zone that will be presented to the Burkburnett Development Corporation for additional funding. Mr. Whaley stated the City is required to commit to 20% of the overall cost of the project while the grant will cover the remaining 80% of costs. The fiscal impact to the TIF Zone Fund is \$74,960.40.

Motion was made by Mayor Carl Law, seconded by Darren Baber to approve the funding for the TAP program up to and not to exceed \$75,000.00. Motion carried unanimously.

Item 4. Motion was made by Darren Baber, seconded by Bin Ellet to adjourn. Motion carried unanimously.

David Strayhorn, Chair

Janelle Dolan, City Clerk



TIF Board Agenda Memo

From: Mike Whaley
City Manager

Date: August 17th, 2015

Item: TIF Escrow Agreement Proposed Nursing Facility

Background

Don Miller, owner of Foursquare Healthcare approached the City of Burkburnett about the development of a skilled nursing facility and possible incentives available for the development. Here are some of the details of the proposed development: 52,000 square foot building, 7-8 million dollar investment, approximately 130 employees, 4 million dollar payroll, wage structure form \$9.00 per hour up to salary of \$125,000 annual salary. The site selection of the development is located within the TIF Zone. The proposed agreement consists of funds totaling \$170,000. \$50,000 for the extension of a three-phase electric line from ONCOR and \$120,000 for the extension of an eight inch water main. Included in the packet are a plat of the site and the preliminary site plan. Both have been approved by the Planning and Zoning Commission and will seek final approval from Board of Commissioners on the 17th at 7:00pm. Current balance of the TIF fund is \$271,295 with an estimated revenue of \$95,000 for fiscal year 2016.

Fiscal Impact

\$120,000

Options

Approve agreement
Deny agreement

Staff Recommendation

Staff recommends approving agreement as presented

Attachments

Escrow Agreement/Nursing Facility
Plat
Site Plan

ESCROW AGREEMENT
(City of Burkburnett)

THIS ESCROW AGREEMENT (this "Agreement") is entered into effective as of _____, 2015 by and between the **CITY OF BURKBURNETT, TEXAS**, a Texas home rule municipality ("City") and **BURKBURNETT NH REALTY, LTD.**, a Texas limited partnership ("Purchaser") and **FIRST WESTERN TITLE COMPANY** ("Escrow Agent").

RECITALS

AP&C Development Corporation ("Seller") and Purchaser have entered into a Real Estate Contract with an effective date of May 27, 2015 (as amended from time to time, the "Contract") regarding the purchase and sale of the certain real property more particularly described in the Contract (the "Property"); and

The City has agreed to pay for the construction of certain improvements to the Property through funds from the Tax Increment Fund, as detailed hereinbelow; and

NOW, THEREFORE, in consideration of the foregoing, the covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Purchaser and City hereby agree as follows:

ARTICLE 1

DEFINED TERMS

Section 1.1 The Utility Extension Escrow.

(a) Concurrently with closing and the execution of this Agreement, the City **will deposit** with Escrow Agent the cash sum of ONE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$170,000.00) (the "Utility Extension Escrow Funds"). The Utility Extension Escrow Funds shall be deposited in an interest bearing account with interest accruing thereon being paid into the fund and forming a part of such fund, and such fund shall be governed by an escrow agreement. The use of the Utility Extension Escrow Funds shall be to complete the work (the "Extension Work") at the estimated cost, as follows:

ONCOR 3 Phase Extension	\$50,000.00
8" Water Line Extension	\$120,000.00

(b) Under the supervision of Purchaser or Purchaser's agents, certain utility contractors (each a "Utility Contractor") shall construct, erect, undertake and complete or cause to be fully constructed, erected, undertaken and completed Extension Work to the

Property. The City shall not be responsible for the quality of the Extension Work, but only for the payment in full thereof pursuant to this Agreement.

(c) Except as otherwise expressly set forth herein, the Utility Extension Escrow Funds shall be used to reimburse the Purchaser for the amount paid to each Utility Contractor for their respective approved costs and expenses incurred by same in completing the Utility Extension Work.

(d) Escrow Agent shall release to Purchaser the applicable portion of the Utility Extension Escrow Funds as and when requested by the Purchaser upon receipt of (i) a Request for Release specifying the amount requested and the Extension Work to be paid for with the requested Utility Extension Escrow Funds; and (ii) City's written authorization for release of the requested Utility Escrow Funds.

(e) Subject to the other terms and conditions contained in this Agreement, Escrow Agent shall not be obligated to release any Utility Extension Escrow Funds to pay for the cost of any improvement or item other than the Extension Work listed in Section 1.1(a) hereto.

Section 1.2 Start / Completion Dates. The Parties anticipate that the construction of the Extension Work, being the Work described in Section 1.1(a) will be completed no later than 365 days (plus industry standard "rain days" and delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, floods, hurricanes, tornadoes, earthquakes and other severe weather conditions or any other causes of any kind whatsoever which are beyond the reasonable control of a Utility Contractor), from the Extension Work start date, which time period is herein called the "Outside Work Completion Date." The Extension Work start date shall be the date upon which the Contract closes (the "Work Start Date"). Any Work performed after the Outside Work Completion Date will not be paid from the Escrow Funds.

Section 1.3 Cost Overruns / Excess Escrow Funds. The City shall not be responsible for the payment of any and all costs and expenses in completing any Utility Extension Work in excess of the Extension Escrow Funds set forth in Section 1.1(a). In the event that, upon final completion of the Extension Work, the amount of Extension Escrow Funds is not completely expended, then Escrow Agent shall disburse the remaining Extension Escrow Funds to the City within 10 days of receipt of the City's written request and Purchaser's written acknowledgement that the Extension Work has been completed.

ARTICLE 2

MISCELLANEOUS

Section 2.1 Remedies Cumulative. No right or remedy conferred upon or reserved to Purchaser under this Agreement is intended to be exclusive of any other right or remedy, and each and every such right and remedy shall be cumulative and concurrent and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary by Purchaser.

Section 2.2 Notices. All notices hereunder shall be given in writing to the following addresses:

City of Burkburnett
Attn.: City Manager
501 Sheppard Road
Burkburnett, Texas 76354

Section 2.3 Assignments. This Agreement shall be binding upon the City and its heirs, devisees, representatives, successors and assigns, including successors in interest of the City in and to all or any part of the Property, and shall inure to the benefit of and may be enforced by Purchaser and its successors, legal representatives, substitutes and assigns. The City shall not assign any of its rights or obligations under this Agreement. Purchaser may assign any of its rights or obligations under this Agreement upon written consent from the City.

Section 2.4 Benefits. This Agreement is intended solely for the benefit of the City, Purchaser and Escrow Agent, and no third party shall have any right or interest in this Agreement, nor any right to enforce this Agreement against any party hereto.

Section 2.5 Waiver. This Agreement may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Purchaser and Escrow Agent, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 2.6 No Relationship. Nothing herein is intended to create, nor creates, nor shall be deemed to create, a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between the City and Purchaser.

Section 2.7 Conflicting Provisions. If any provisions of this Agreement shall conflict with any provisions of the Contract regarding the Utility Extension Funds, the provisions contained in this Agreement shall control.

Section 2.8 Severability. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

Section 2.9 Governing Law and Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THE VENUE FOR ANY ACTION, CONTROVERSY, DISPUTE OR CLAIM ARISING UNDER THIS AGREEMENT SHALL BE IN A COURT OF APPROPRIATE JURISDICTION IN WICHITA COUNTY, TEXAS EXCLUSIVELY.

Section 2.10 LIABILITY OF ESCROW AGENT. THE ESCROW AGENT HEREBY CONSENTS AND AGREES TO ALL OF THE PROVISIONS HEREOF, AND AGREES TO ACCEPT, AS ESCROW AGENT HEREUNDER, ALL CASH AND DOCUMENTS DEPOSITED HEREUNDER, AND AGREES TO HOLD AND DISPOSE OF SAID CASH

AND DOCUMENTS DEPOSITED HEREUNDER IN ACCORDANCE WITH THE TERMS AND PROVISIONS HEREOF. IT IS AGREED THAT THE ESCROW AGENT SHALL HAVE NO OBLIGATION OR LIABILITY HEREUNDER EXCEPT AS A DEPOSITARY TO RETAIN THE CASH WHICH MAY BE DEPOSITED WITH IT HEREUNDER AND TO DISPOSE OF THE SAME IN ACCORDANCE WITH THE TERMS HEREOF. THE ESCROW AGENT SHALL BE ENTITLED TO RELY AND ACT UPON ANY WRITTEN INSTRUMENT RECEIVED BY IT, AND IF A CORPORATION, PURPORTING TO BE EXECUTED BY AN OFFICER THEREOF, AND IF A PARTNERSHIP, PURPORTING TO BE EXECUTED BY A GENERAL PARTNER THEREOF AND SHALL NOT BE REQUIRED TO INQUIRE INTO THE AUTHORITY OF SUCH OFFICER OR PARTNER OR THE CORRECTNESS OF THE FACTS STATED IN SAID INSTRUMENT. BY ACCEPTANCE OF THIS AGREEMENT, ESCROW AGENT AGREES TO USE ITS BEST JUDGMENT AND GOOD FAITH IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS AND DUTIES UNDER THIS AGREEMENT AND SHALL INCUR NO LIABILITY TO ANY PERSON FOR ITS ACTS OR OMISSIONS HEREUNDER, EXCEPT FOR THOSE ACTS OR OMISSIONS WHICH MAY RESULT FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. UPON DISPOSITION BY THE ESCROW AGENT, IN ACCORDANCE WITH THE TERMS HEREOF, OF THE CASH DEPOSITED WITH THE ESCROW AGENT HEREUNDER, THE ESCROW AGENT SHALL BE FULLY AND FINALLY RELEASED AND DISCHARGED FROM ANY AND ALL DUTIES, OBLIGATIONS, AND LIABILITIES HEREUNDER.

Section 2.11 Disputes. In the event of a dispute between any of the parties hereto as to their respective rights and interests hereunder, the Escrow Agent shall be entitled to hold any and all Extension Escrow Funds then in its possession hereunder until such dispute shall have been resolved by the parties in dispute and the Escrow Agent shall have been notified by instrument jointly signed by all of the parties in dispute, or until such dispute shall have been finally adjudicated by a court of competent jurisdiction.

The remainder of this page is left blank. The signature page(s) follow.

All parties have executed this Agreement to be effective as of the date first above written.

PURCHASER:

CITY:

BURK NH REALTY, LTD.,
a Texas limited partnership

THE CITY OF BURKBURNETT, TEXAS
a Texas home rule municipality

By: NTF REALTY, INC., a Texas corporation,
its general partner

By: _____
Name: _____
Title: _____

By: _____

Name: _____

Title: _____

ESCROW AGENT:

FIRST WESTERN TITLE COMPANY

By: _____

Name: _____

Title: _____

STATE OF TEXAS
COUNTY OF WICHITA

WHEREAS Burke NH Realty, Ltd and A. P. & C. Development Corporation are the owners of 9.48 acres out of the C. Winters Survey, A-322, Burkburnett, Wichita County, Texas, and more particularly described by metes and bounds as follows:

BEGINNING at an iron rod found at the intersection of the East line of U.S. 287/H 44 and the South line of a 10 foot alley out of Section Four, Ashton Addition as recorded in Volume 3, Page 180A and 180B, Wichita County Plat Records, for the Northwest corner of this tract;

THENCE N 89° 32' 48" E. with the South line of said 10 foot alley, a distance of 535.63 feet to an iron rod found in the West line of a 20 foot alley out of Section 5, Ashton Addition as recorded in Volume 23, Page 197 and 198, Wichita County Plat Records, for the Northeast corner of this tract;

THENCE S 00° 03' 35" W, with the West line of said 20 foot alley, at 10.00 feet pass a 1/2" iron rod set, at 742.50 feet pass a 1/2" iron rod set in the North right of way line of Merion Drive, and continuing on the same course, a total distance of 792.50 feet to a 1/2" iron rod set in the South right of way line of Merion Drive, for the Southeast corner of this tract;

THENCE N 89° 53' 46" W a distance of 509.90 feet to a 1/2" iron rod set in the East line of U.S. 287/H 44, for the Southwest corner of this tract;

THENCE N 01° 48' 35" W, with the East line of U.S. 287/H 44, at 50.03 feet pass a 1/2" iron rod set in the projected North right of way line of Merion Drive, at 777.73 feet pass a 1/2" iron rod set, and continuing on the same course, a total distance of 787.73 feet to the PLACE OF BEGINNING and containing 9.48 acres of land.

THEREFORE, the owners of the land shown on this plat and whose names are subscribed hereto, and in person or through a duly authorized agent hereby dedicates to the use of the public forever all streets, alleys, parks, watercourses, drains, easements and public places thereon shown for the purpose and consideration therein expressed and further warrants that they have lawful authority to make such dedications.

BURKE NH REALTY, LTD
By: NTF Realty, Inc. General Partner

By: William E. Campbell, President

Howard R. Clement, President
A. P. & C. Development Corporation

STATE OF TEXAS
COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared Don Miller, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the _____ day of _____, 20____.

Notary Public, _____ County, Texas

STATE OF TEXAS
COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared Howard R. Clement, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the _____ day of _____, 20____.

Notary Public, _____ County, Texas

This Plat of Lot 1, Block 1, Burke NH Addition, an addition to the City of Burkburnett, has been submitted to and considered by the City Commission of the City of Burkburnett, Texas, and is hereby approved.

Dated this _____ day of _____, 20____.

Mayor, City of Burkburnett

This is to certify that all taxes due and collected by the Burkburnett Independent School District on the above described property have been paid up to and including _____ with the following exceptions:

This certification is conditional on values certified by the Appraisal District as of this date. Any changes to the certified value made subsequent to the date of the certification are not included.

Tax Collector: _____

by Deputy: _____

Date: _____ 2015

This is to certify that all taxes due and collected by Wichita County, and the City of Burkburnett on the above described property have been paid up to and including _____ with the following exceptions:

This certification is conditional on values certified by the Appraisal District as of this date. Any changes to the certified value made subsequent to the date of the certification are not included.

Tax Collector: _____

by Deputy: _____

Date: _____ 2015

I hereby certify that this plat has been prepared from an actual and accurate field survey of the land under my personal supervision on July, 2015; and that all information shown is true and correct; and that all monuments shown thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Wichita Falls, Texas.



DEVIN C. SMITH
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5849

The herein described property does not lie within the Special Flood Hazard Areas inundated by 100 Year Flood as delineated on the Flood Insurance Rate Map for the City of Burkburnett, Wichita County, Texas.

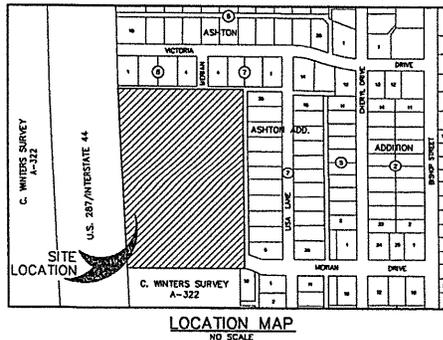
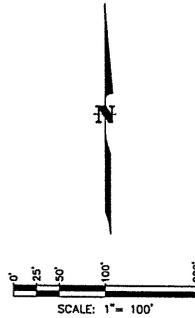
Panel Number: 4B485C0185G.

Dated: February 3, 2010

as published by the U.S. Department of Homeland Security, Federal Emergency Management Agency.

Flood Zone designation is Zone X.

BASIS OF BEARING IS THE EAST LINE OF
U.S. 287/H 44 BEING N 01° 48' 35" W



FINAL PLAT BURKE NH ADDITION LOTS 1 AND 2 BLOCK 1

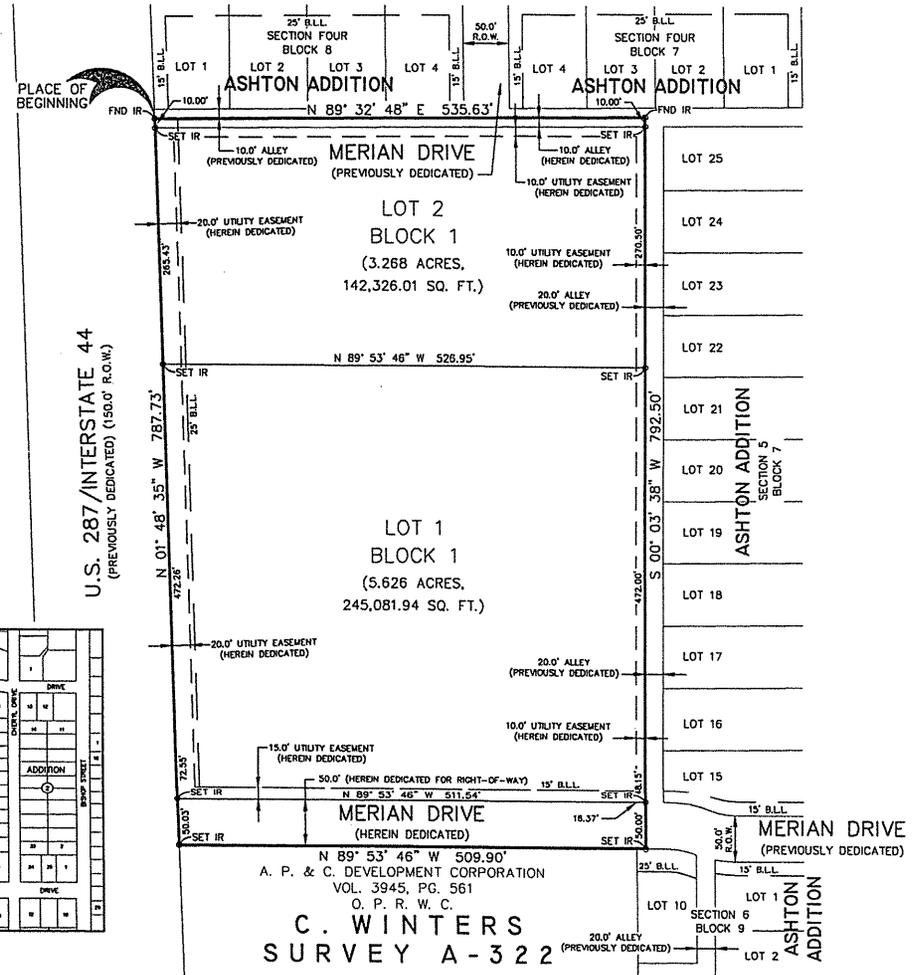
BURKBURNETT, TEXAS
OUT OF
THE C. WINTERS SURVEY, A-322

JULY, 2015
SCALE: 1" = 100'

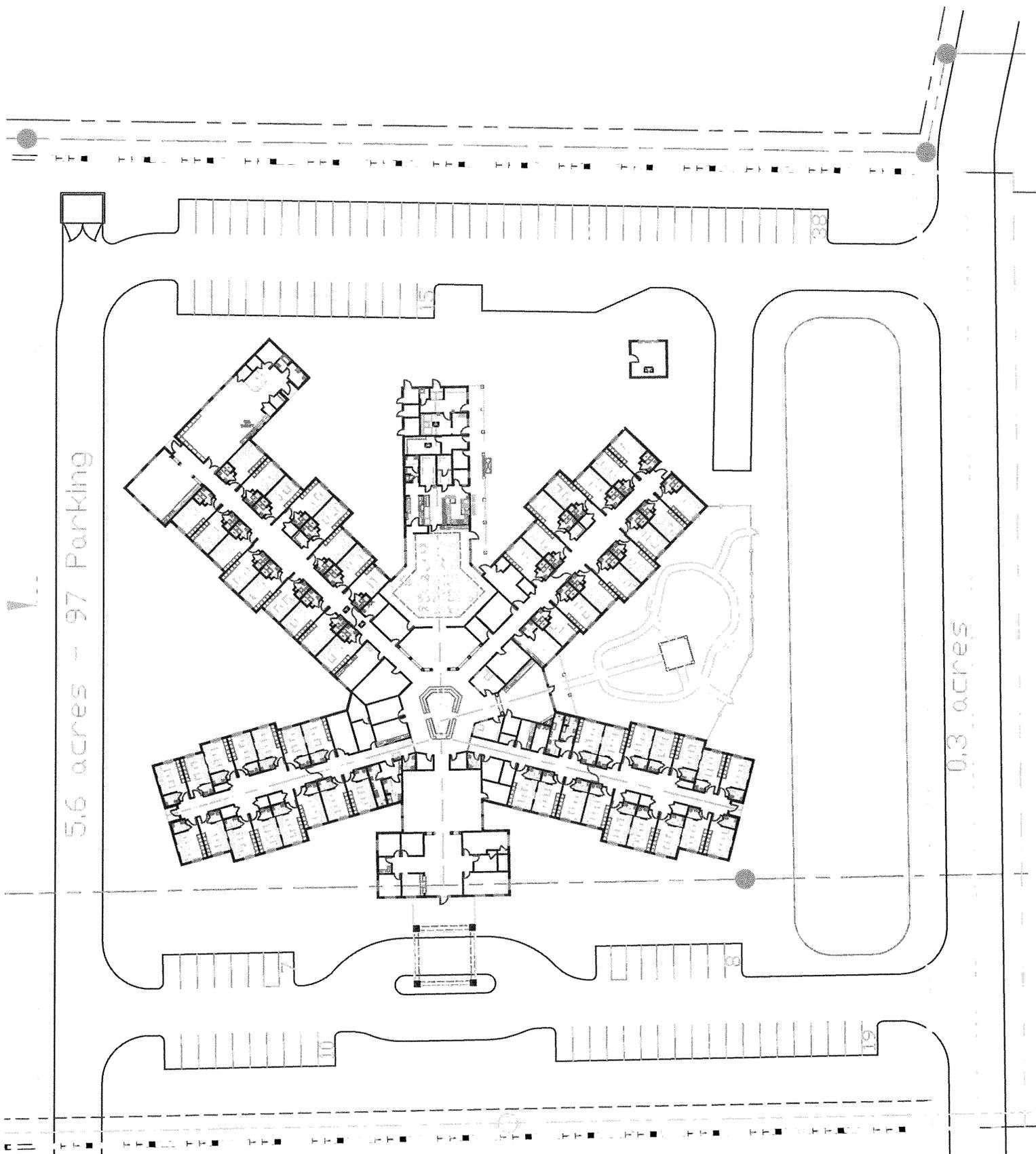
OWNER
BURKE NH REALTY, LTD
NTF REALTY, INC. GENERAL PARTNER
4809 COLE AVENUE STE 347
DALLAS, TEXAS 75205
PHONE (214) 521-9293

OWNER
A. P. & C. DEVELOPMENT CORPORATION
P.O. BOX 575
BURKBURNETT, TEXAS 76354
PHONE (940) 569-3333

PREPARED BY
CORLETT, PROBST & BOYD, P.L.L.C.
ENGINEERS & SURVEYORS
4605 OLD JACKSBORO HIGHWAY
WICHITA FALLS, TEXAS 76702
PHONE (940) 723-1455



C:\WALT\2015\20150703.DWG FINAL PLAT P-8/6/2015 9:17 AM 5-8/6/2015 9:16 AM WALT



5.6 acres - 97 Parking

0.3 acres

IH 44 - Hwy 281