

CHAPTER 380
AMENDED AND RESTATED ECONOMIC DEVELOPMENT INCENTIVE
AGREEMENT

This Amended and Restated Chapter 380 Economic Development Incentive Agreement (“**Agreement**”) is made by and between the City of Corinth, Texas, a home rule municipality (the “**City**”), and Rak Real Estate Equities - Corinth LLC, a Texas limited liability company (the “**Developer**”), acting by and through their respective authorized representatives (each a “**Party**” and collectively the “**Parties**”). This Agreement amends, restates, and supersedes the Chapter 380 Economic Development Incentive Agreement executed on January 19, 2023, by and between the Parties.

Recitals:

WHEREAS, the Developer intends to purchase approximately 6.2 acres of land located at the southwest corner of North Corinth Street and Shady Shores Road within the corporate limits of the City of Corinth, Texas, legally described in **EXHIBIT “A”** (the “**Property**”) and depicted in **EXHIBIT “B”** (the “**Project Site**”); and

WHEREAS, the Developer intends to spend a minimum of Nine Million Dollars (\$9,000,000.00) to construct on the Property a minimum of sixty-five thousand (65,000) square feet of industrial space for e-commerce, warehouse/distribution uses, or other industrial uses and construct improvements to Hondue Lane, including the construction of a cul-de-sac (the “**Improvements**”), in order to obtain one or more building permits, in accordance with the site plan attached as **EXHIBIT “C”** (the “**Site Plan**”); and

WHEREAS, the City recognizes the construction of improvements to Hondue Lane as a crucial economic benefit and as a means by which to improve connectivity for the Project Site and adjacent properties; and

WHEREAS, the Developer has informed the City that a contributing factor that would induce the Developer to construct the Improvements would be an agreement with the City to provide economic development grants as set forth herein; and

WHEREAS, the City desires to encourage new and expanded businesses enterprises within the City that will add employment opportunities, property tax base, and generate additional sales tax and other revenue for the City; and

WHEREAS, the City intends to contribute an amount not to exceed Fifty-Two Thousand Dollars (\$52,000.00) toward the Improvements by rebating a portion of building permit fees paid by the Developer; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development grants set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS the City is authorized by Article III, Section 52-a of the Texas Constitution and TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development incentives for public purposes to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, on or about January 19, 2023, the Parties entered into a Chapter 380 Economic Development Incentive Agreement for the Improvements outlining the duties and responsibilities of the Parties relative to the Improvements (hereinafter “Original Incentive Agreement”). Subsequent to the execution of the Original Incentive Agreement, the Parties continued discussions and determined it appropriate to make certain amendments to the Original Incentive Agreement to more accurately reflect the rights and obligations of the Parties relative to the square footage of the Improvements. The rights, duties, and obligations of the Parties as set forth in this Agreement are intended to amend, restate, and supersede the terms of the Original Incentive Agreement, and the Parties agree and understand that this Agreement shall become effective upon execution by the Parties; and

WHEREAS, the City has determined that making an economic development grant to the Developer in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and its citizens, and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby covenant and agree as follows:

**Article I.
Definitions**

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Agreement” shall have the meaning ascribed in the introductory paragraph above.

“Affiliate” shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with, the Developer.

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

“City” shall have the meaning ascribed in the introductory paragraph above.

“Commencement of Construction” shall mean released for construction upon approval of the civil plans by the City Engineer, and continuously working towards completion of the Improvement without letting the permits lapse.

“Completion of Improvements” shall mean receiving a certificate of occupancy from the City for a minimum of sixty-five thousand (65,000) square feet of new industrial space constructed in accordance with applicable ordinances and receiving a letter of acceptance for the construction of the improvements to Hondue Lane and cul-de-sac or the Developer’s submission of all materials and information required by the City for issuance of a temporary certificate of occupancy for a completed portion of the Project, whichever occurs first.

“Developer” shall have the meaning ascribed in the introductory paragraph above.

“Effective Date” shall mean the last date on which all of the Parties hereto have executed this Agreement.

“Expiration Date” shall mean the date that all parties have fully satisfied their respective obligations.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Grant Payment” shall mean the City’s payment to the Developer not to exceed Fifty-Two Thousand Dollars (\$52,000) as described within Article III of this Agreement.

“Hard Costs” shall mean the aggregate of the following costs expended by Developer for the Development: actual site development and construction costs, contractor fees, and the costs of supplies and materials, but excludes land acquisition costs paid by Developer for the various parcels that make up the Development Property.

“Improvements” shall have the meaning ascribed in the Recitals above and is generally depicted in the site plan attached as **EXHIBIT “C.”**

“Local Firm” shall mean any firm lawfully engaged in business and located within the limits of the City. Any firm not meeting such criteria does not qualify as a “Local Firm” for purposes of this Agreement.

“Payment Request” shall mean a complete written request from the Developer to the City for payment of the Grant Payment.

“Property” shall have the meaning ascribed in the Recitals above.

“Site Plan” shall mean the site plan attached hereto as **EXHIBIT “C.”**

“Total Development Costs” means the aggregate of land costs, hard costs, as defined herein, and the following costs directly expended by the Developer for the Improvements: engineering fees; architectural and design fees; real estate commissions; costs of third-party consultants, including attorneys and environmental consultants; development fees; zoning fees; insurance and taxes directly related to the construction of the Improvements; and financing costs, including capitalized interest, FF&E, (Furniture, Fixtures and Equipment).

Article II.

Term

2.01. The term of this Agreement (the “**Term**”) shall begin on the Effective Date and continue until the Expiration Date, unless terminated as provided herein.

2.02. The Term of this Agreement may be extended for an additional period of time on terms mutually acceptable to the Parties by a written agreement executed by both parties.

Article III.

Grant Payment

3.01. Subject to the Developer’s satisfaction of and compliance with all of the terms and conditions of this Agreement, the City agrees to pay the Developer a Grant Payment in the form of a rebate of the verified actual building permit fees paid by the Developer for the Improvements on the Property up to an amount not to exceed Fifty-Two Thousand Dollars (\$52,000.00). The Developer acknowledges that this Agreement makes an allowance for the building permit fee Grant Payment which means the City will rebate to the Developer a portion of the building permit fees paid by the Developer for the Improvements after a certificate of occupancy is issued for a minimum of 65,000 square feet of new industrial space and a letter of acceptance is issued for the completion of improvements to Hondue Lane including a cul-de-sac.

3.02. Following the Completion of Improvements, but not later than sixty (60) days after the Completion of Improvements, the Developer shall submit a Payment Request accompanied by the receipt of payment of the building permit fees and other records as the City may reasonably request to verify Total Development Costs are at least \$9,000,000.00 for the Improvements. The City is not responsible for paying, waiving, or reducing any building permit fees if the total amount of building permit fees paid by the Developer for the Improvements exceeds \$52,000.00.

Article IV.

Conditions on Grant Payment

4.01. **City’s Obligations.** The obligation of the City to pay the Grant Payment shall be conditioned upon the Developer’s compliance with and satisfaction of all of the terms and conditions of this Agreement, including without limitation, each of the conditions set forth below:

- a. Payment request. The Developer shall have timely provided the City with the Payment Request within sixty (60) days after Completion of Improvements. The City is entitled to verify the Developer paid the building permit fees before the Grant Payment is paid.
- b. Good standing. The Developer shall not have an uncured breach of this Agreement.
- c. Construction. Commencement of Construction and Completion of Improvements occur within the time required by this Agreement.
- d. Certificate of Occupancy. The Developer shall have timely received a certificate of occupancy for the minimum 65,000 square foot industrial space.
- e. Letter of Acceptance. The Developer shall have timely received a letter of acceptance for improvements to Hondue Lane and the construction of a cul-de-sac.
- f. Receipts. The Developer timely submits the receipt for the building permit fees and the City verifies that the Developer incurred costs of at least \$9,000,000.00 for the Improvements.

4.02. **No Obligation to Pay Grant.** Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Grant Payment shall not be due and payable, and this Agreement may be terminated by the City (that is, without any opportunity for cure by the Developer), if the Developer fails to timely comply with and satisfy to the City's reasonable satisfaction any of the conditions of the Grant Payment as set forth in this article. If the Developer fails to request the Grant Payment as set forth above, the City shall have no obligation to make such Grant Payment to the Developer and the Developer will have forever forfeited the right to receive such payment.

Article V. Developer Obligations

5.01. **Construction Improvements Timeframe.** The Developer shall cause the construction of the Improvements to be built in substantial general conformance with this Agreement. The Developer shall cause the Commencement of Construction to occur not later than January 31, 2025, subject to events of Force Majeure. The Developer shall cause Completion of Improvements to occur not later than thirty-six (36) months after the Commencement of Construction, or December 31, 2028, subject to any events of Force Majeure.

5.02. **Development of the Property.** The Developer understands and acknowledges that approval of a site plan, consistent with **EXHIBIT "C,"** for the Property by the City is required prior to Commencement of Construction of the Improvements. The Developer agrees that construction of the Improvements shall be in conformance with the most recently adopted building codes of the City and that building permit applications will be reviewed under such codes and the construction plans for Hondue Lane shall be in conformance with all applicable City codes and regulations. All portions of the Improvements that are intended to be occupied must secure certificates of inspection, compliance, or occupancy, as applicable, by the City and Hondue Lane must secure a letter of acceptance by the City. The development and use of the Property shall comply with the ordinances, policies, standards and regulations of the City, including but not limited to the zoning ordinance, as amended, and subdivision ordinance, as amended. The Developer represents that it will invest at least Nine Million Dollars (\$9,000,000.00) in Total

Development Costs for the Improvements on the Property.

5.03. **Leasing of Industrial Space.** The Developer agrees to construct a minimum of 65,000 square feet of new industrial space, which includes leasing the space to industrial tenants and finishing-out the space for industrial tenants. The City agrees that the entire building can be leased to one tenant or subdivided for multiple tenants.

5.04. **Purchase of Taxable Items.** The Developer shall use all reasonable efforts to purchase Taxable Items in connection with Improvements from Local Firm(s).

5.05. **Non-Discrimination.** The Developer agrees to ensure there will be no unlawful discrimination in employment on the basis of race, creed, color, national origin, sex, or disability or violations of any other applicable anti-discrimination laws in connection with this Agreement.

5.06. **Compliance with Law.** In performing its obligations under this Article, the Developer shall comply with all applicable laws, regulations, and ordinance with respect to this Agreement.

5.07. **Architectural Standards.** As consideration for the Grant Payment, the Developer has consented to and requested, and the Parties agree, that the City's architectural standards contained in the zoning ordinance and in other City ordinances, all as subsequently amended, to apply to the Property, and voluntarily agrees to burden the Property with their applicability, despite Texas Government Code Chapter 3000, effective September 1, 2019, as it presently exists or may be subsequently amended. The Parties further acknowledge and agree that the terms, provisions, covenants, and agreements contained in, or referenced in, this paragraph are covenants that touch and concern the Property and that it is the intent of the Parties that such terms, provisions, covenants, and agreements shall run with the Property and shall be binding upon the Parties hereto, their successors and assigns, and all subsequent owners of the Property. Should any amendment to the building material regulations contained in the zoning ordinance and in other city ordinances be held to be invalid by a court of competent jurisdiction, the Parties agree that the building material regulations in effect on August 1, 2019 shall then touch and concern the Property and be binding upon the Property.

Article VI. Termination

6.01. **Termination.** This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of all the Parties;
- (b) by the City, if the Developer defaults or breaches any of the terms or conditions of this Agreement or a Related Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) by the City, if any Impositions owed to the City or the State of Texas by the Developer shall have become delinquent (provided, however, the Developer retains the right to timely and properly protest and contest any such

- Impositions);
- (d) by the City, if the Developer suffers an event of Bankruptcy or Insolvency;
 - (e) by any Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable;
 - (f) by the City immediately if the Developer files any false documentation relating to the Expenditure Information submitted to verify the amount of any Payment Request;
 - (g) by the City, if any applicable building permits required for the Improvements and issued by the City are revoked or expire, and the Developer fails to make reasonable efforts to obtain new permits, as determined by the City and such default is not cured by the Developer within thirty (30) days after written notice thereof; or
 - (h) by the City immediately upon the filing by the Developer of any lawsuit against the City.

Article VII. Miscellaneous

7.01. **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto; provided, however the right of the Developer to receive the Grant Payment shall be personal to the Developer and shall not transfer to the Developer's successors and assigns unless expressly agreed to in writing signed by the Parties and such successor/assignee.

7.02. **Limitation on Liability.** Except for the City's obligations to pay the Grant Payment as set forth in this Agreement, the City and its past, present, and future officers, employees, contractors and agents assume no responsibilities or liabilities to the Developer, or any third parties in connection with the Improvements and/or the Property, and the Developer hereby waives any and all claims against the City for any injury to persons or damage to property in connection therewith. The Developer acknowledges and agrees that there shall be no personal recourse to the directors, officers, employees or agents of the City who shall incur or assume no liability in respect of any claims based upon or relating to this Agreement. It is understood and agreed between the Parties that Developer, in satisfying the conditions of this Agreement, has acted independently, and the City assume no responsibilities or liabilities to third parties in connection with these actions.

7.03. **Entire Agreement.** This Agreement, including the Recitals any exhibits attached hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein and supersedes all prior negotiations, representations, and/or agreements, either written or oral.

7.04. **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.05. **Amendments.** This Agreement may only be amended by written instrument signed

by all the Parties.

7.06. **Successors and assigns.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.

7.07. **Recitals.** The recitals to this Agreement are incorporated herein.

7.08. **Notice of Bankruptcy.** In the event the Developer files for bankruptcy, whether involuntarily or voluntary, the Developer shall provide written notice to the City within three (3) business days of such event.

7.09. **Authorization.** Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.10. **Notices.** Notices under this Agreement are sufficient if given by nationally recognized overnight courier service; certified mail (return receipt requested); facsimile with electronic confirmation; or personal delivery to the other Party at the address furnished below. Notice is effective: (i) when delivered personally; (ii) three (3) business days after sending by certified mail; (iii) on the business day following the date such notice is sent by nationally recognized courier service; or (iv) on the business day following the date such notice is sent by facsimile with electronic confirmation to the sender. It is understood and agreed that routine business and technical correspondence may be furnished in electronic form. The contact information for each Party is as follows:

THE CITY:

City of Corinth
3300 Corinth Parkway
Corinth, Texas 76208
Attention: City Manager
Telephone: (940) 498 – 3243
E-mail: scott.campbell@cityofcorinth.com

WITH A COPY TO:

Patricia Adams
Messer, Fort & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034
Phone: (972) 688-6400
Email: Patricia@txmunicipallaw.com

THE DEVELOPER:

Rak Real Estate Equities – Corinth, LLC

Attn: Zach Rakusin
6205 La Vista Drive
Dallas, Texas 75214
Telephone: 214-462-5619
E-mail: zach@rakequities.com

Each Party may update their contact information by delivering written notice to the other Party within thirty (30) days of change to contact information.

7.11. **Governing Law.** This Agreement is made, and it shall be construed and interpreted under the laws of the State of Texas, without regard to choice of law rules. The mandatory venue for any legal proceedings shall lie in State court of competent jurisdiction located in Denton County, Texas.

7.12. **Legal Construction.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under the applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision found to be illegal, invalid, or unenforceable, that a clause or provision be added to this Agreement which is legal, valid, and enforceable, and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

7.13. **Third Parties.** The Parties intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, nor any individual or entity other than the City and the Developer or permitted assignees or successors of the City and the Developer.

7.14. **No Partnership or Joint Venture.** It is acknowledgement and agreed by the Parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture between the Parties. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

7.15. **Immunity.** The City in entering this Agreement, does not waive its governmental immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas.

7.16. **Employment of Undocumented Workers.** During the term of this Agreement, and in accordance with Chapter 2264 of the Texas Government Code, the Developer agrees not to knowingly employ any "UNDOCUMENTED WORKERS" (as such term is defined in Section 2264.001) in connection with construction of the Improvements, and, if convicted of a violation under 8 U.S.C. Section 1324a(f), the Developer shall be deemed to be in default of this Agreement and repay the total amount of the Grant Payment and any other funds received by the Developer from the City as of the date of such violation within 120 days from the date that the Developer is notified by the City of such violation, plus interest at the rate of five (5) percent compounded annually from the date of the violation until paid in full. However, the Developer is not liable for an unknown violation of this Paragraph by a subsidiary, affiliate, or franchisee of the Developer

or by a person with whom the Developer contracts.

7.17. **Community Involvement.** Although not an event of default of condition of any advance hereunder, the Developer agrees to endeavor to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in the City of Corinth, Texas, and to actively encourage its employees to be involved in such organizations and/or activities.

7.18. **Procurement of Local Firms.** Although not an event of default of condition of any advance hereunder, the Developer agrees to use reasonable efforts to purchase all goods and services from Local Firms whenever such goods and services are comparable in availability, quality and price.

7.19. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one and the same instrument.

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

7.21 **Report Agreement to Comptroller's Office.** The City covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code.

(signatures on the following pages)

EXECUTED in duplicate originals to be effective as of the Effective Date.

ATTEST:

DocuSigned by:
Lana Wylie
D77DD89FB0C3473...

Lana Wylie, City Secretary



CITY OF CORINTH, TEXAS,
a home-rule municipal corporation

DocuSigned by:
Scott Campbell
BF5097789519492...

Scott Campbell, City Manager

Date: 11/8/2023

APPROVED AS TO FORM:

DocuSigned by:
Patricia Adams
B5BAF55D871D428...

Patricia Adams, City Attorney

**RAK REAL ESTATE EQUITIES -
CORINTH LLC**

a Texas limited liability company

DocuSigned by:

Zach Rakusin

D970A12EFA16498...

By: Zach Rakusin

Its: Partner

Date: 11/16/2023

EXHIBIT "A" LEGAL DESCRIPTION

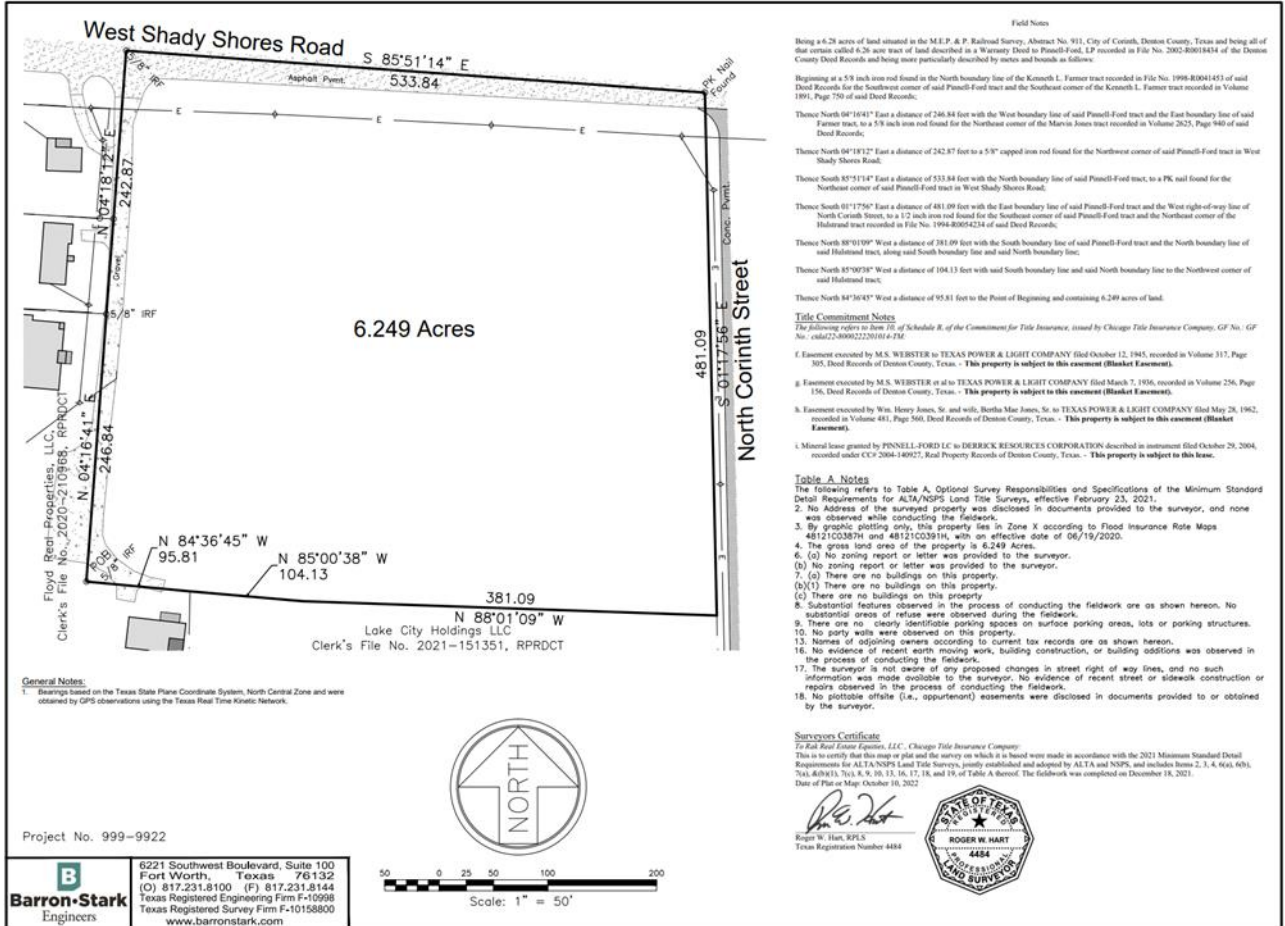


EXHIBIT "B"
PROJECT SITE



EXHIBIT "C"

SITE PLAN

