

**AMENDED AND RESTATED CHAPTER 380
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

This Amended and Restated Chapter 380 Economic Development Incentive Agreement (“**Agreement**”) is made by and among the City of Corinth, Texas, a home rule municipality (the “**City**”), the Corinth Economic Development Corporation, a Type B corporation organized under the Development Corporation Act (Chapters 501 and 505 of the Texas Local Government Code) (the “**CEDC**”), RCM Corinth Land LLC, a Texas limited liability company (“**RCM - CL**”), and Realty Capital Management, L.L.C., a Texas limited liability company, (“**RCM**”)(**RCM-CL** and **RCM** are collectively the “**Developer**”) acting by and through their respective authorized officers and representatives. The City, the CEDC, and the Developer may also be referred to collectively as the “**Parties**,” or individually as a “**Party**.”

Recitals:

WHEREAS, RCM assigned its rights and duties under the terms of the Purchase and Sale Agreement (the “**Contract**”) with the City and CEDC, dated September 29, 2022, to RCM – CL for the 20.859 acres of land described in **EXHIBIT “A”** and depicted in **EXHIBIT “B”** (the “**Property**”).

WHEREAS, the RCM-CL is the record owner of the Property, and the Developer is developing the Property; and

WHEREAS, the Developer has informed the City and CEDC that financial incentives from the City and CEDC would cause the Developer to develop and construct on the Property a planned development consisting of a minimum of 250 multifamily residential units, a minimum of ten (10) townhomes, a minimum of 20,000 square feet of commercial space to include office, retail and/or restaurant space, and a minimum 80-key dual brand, limited service hotel that will benefit the City by creating 15 new full-time jobs and generating revenue from sales and use taxes and from ad valorem taxes due to the increased value resulting from the improvements to the Property (the “**Project**”); and

WHEREAS, the Developer intends to spend a minimum of \$45,000,000 for the Project, including land acquisition of the Property; 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 grants for public purposes of promoting local economic development and incentivizing business and commercial activity in the City; and

WHEREAS, the Development Corporation Act, Title 12, Subtitle C1, Chapter 501-505 of the Texas Local Government Code authorizes the CEDC to provide funding and economic development grants for new business enterprises; and

WHEREAS, the City and CEDC have determined that making an economic development grant to the Developer for the Project 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.

WHEREAS, the City, the CEDC, and RCM entered into the Chapter 380 Economic Development Incentive Agreement on September 15, 2022 (the “**Original Agreement**”). The City, CEDC, and the Developer are entering into this Agreement to replace and amend the Original Agreement to make certain amendments to more accurately reflect the Property ownership and the rights and obligations of the Parties in connection with the Project. The rights and obligations of the Parties set forth in this Agreement are intended to amend, restate, and supersede the terms and conditions of the Original Agreement, and the Parties acknowledge and agree that this Agreement shall become effective upon its execution by all Parties; and

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:

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

“Building Permit and Inspection Fees Grant Payment” is defined in Section 5.01(b).

“Certificate of Occupancy” means the certificate of occupancy issued by the City, in accordance with applicable ordinances.

“Commencement of Construction” means obtaining the required permits for grading and construction and continuously working towards completion of the Project without letting the permits lapse.

“Completion of Improvements” means completing a minimum of 250 residential units, a minimum of ten townhomes, and a minimum of 20,000 square feet of new commercial space and a minimum 80-key dual brand, limited service hotel as evidenced by receiving a Certificate of Occupancy from the City in accordance with applicable ordinances or the Developer’s submission of all materials and information required by the City for issuance of a Certificate of Occupancy for a completed portion of the Project, whichever occurs first.

“Compliance Certificate” means the statement that the Developer is in full compliance with its obligations under this agreement or, if not in full compliance, a

statement disclosing the nature of any non-compliance and reasons therefore.

"Direct Payment Permit" also referred to herein as a "Texas Direct Payment Permit" means that permit issued by the State of Texas authorizing the Developer to self-assess and pay applicable state and local use taxes directly to the State of Texas related to selected portions of the Developer's taxable purchases. Rule 3.288 of the Texas Administrative Code defines the requirements and responsibilities of Texas Direct Payment Permit holders along with any amendments, permutations, or recodifications of such Code or Rules whether renaming such permits or otherwise modifying such provisions.

"Effective Date" means the last date on which all of the parties hereto have executed this Agreement.

"Full-Time Equivalents - FTEs" means an employee hired to work a minimum of 2,080 hours of work over a 12 month term (40 hours per week), including allowance for vacation and sick leave, employed exclusively and on-site at the Project.

"Improvements" means the buildings and parking depicted on the concept plan in **EXHIBIT "C,"** attached hereto and made part of this Agreement for all purposes.

"Grant Payments" means the City's and CEDC's payment(s) to the Developer as described within Article V. of this Agreement.

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

"Minimum Capital Investment" means the minimum amount of the capital investment. The minimum amount shall be \$45,000,000.

"Open Space" is defined in Section 3.01(b).

"Project" means a mixed-use development, in accordance with **EXHIBIT "C,"** that has a minimum capital investment of at least \$45,000,000 and includes:

- a. a minimum of 250 multifamily residential units and a minimum of ten (10) townhomes;
- b. 20,000 square feet of commercial space encompassing office, retail and/or restaurant. The minimum of 20,000 square feet means new commercial space, on the first floor, for lease and finish out to restaurant, retail, office, and other commercial tenants; and
- c. A dual-brand hotel with a minimum of 80-keys.

“Property” means the property identified in the recitals above.

“Sales and Use Tax Revenue Grant Payments” is defined in Section 5.01(a).

“Sales and Use Tax Revenue” means the amount of sales and use tax revenues generated from the purchase of Taxable Items that are attributable to the construction and equipping of the Property in connection with this Project and collected by the Texas Comptroller of Public Accounts (or any similar or successor tax collection entity or agency of the State of Texas).

“Taxable Items” means taxable items defined in Chapter 321, Texas Tax Code.

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

"Use Tax Certificate" means a certificate or other statement in a form reasonably acceptable to the City setting forth the Developer's collection of use tax imposed by and received by the City from the State of Texas, for the use of Taxable Items by Developer in the City for the applicable calendar month during the Grant Period which are to be used to determine the Developer's eligibility for a Grant, together with such supporting documentation required herein, and as the City and CEDC may reasonably request.

Article II. Term

The term of this Agreement (the “**Term**”) shall begin on the Effective Date and continue until December 31, 2027, unless sooner terminated as provided herein. 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. Timeline of Construction

3.01 Timeline. The Developer agrees the following shall be the timeline for construction:

a. Commencement of Construction shall be on or before June 6, 2023, and Completion of Improvements shall be on or before December 31, 2027.

b. The multifamily, townhomes and the restaurant portion of the development as illustrated in Blocks C and A will be constructed in two phases, depicted in **EXHIBIT D** which identifies the various Blocks of the development and described as follows:

Multifamily and streets: - Phase 1 – Block C: Block C will consist of a minimum of 250 multifamily residential units and streets A and B which will have an east-west access from the frontage road to Corinth Parkway.

1. Construction for Phase 1 shall commence on or before June 6, 2023. The City Manager may extend the deadline for Commencement of Construction for Phase I - Block C by not more than 45 calendar days if the Developer is making progress towards Commencement of Construction.
2. Completion of construction shall be within 30 months after Commencement of Construction.

Townhomes – Phase 1 – Block D: Block D will consist of a minimum of ten (10) townhomes.

1. Construction for Phase 1 shall commence on or before June 6, 2023. The City Manager may extend the deadline for Commencement of Construction for Phase I - Block D by not more than 45 calendar days if the Developer is making progress towards Commencement of Construction.
2. Completion of construction shall be within 30 months after the Commencement of Construction.

Restaurants – Phase 2: – Block A: Block A will consist of multiple restaurants which will be referred to as a restaurant destination with connected outdoor patios:

1. The construction of Block A will be completed in two phases. Phase 1 is 10,000 square feet of restaurant space which may consist of one 10,000 square foot restaurant or two 5,000 square foot restaurants. Construction will commence within six (6) months after the last building in the multifamily component receives a Certificate of Occupancy; and
2. Phase 2 is the remaining 10,000 square feet of restaurant space. Construction will be completed within 36 months after the last building in the multifamily component receives a Certificate of Occupancy.

Hotel: Block B: Block B will consist of the dual-brand, limited service hotel which will have a minimum of 80-rooms and amenities that include a swimming pool, meeting space and a gym and a 2,000 square foot pad site for a restaurant use such as a Starbucks.

1. The Developer shall secure a hotel developer to construct a dual-brand hotel with a minimum of 80-rooms and amenities.
2. The Developer shall enter into a contract to sell the hotel site to a hotel developer on or by January 6, 2024.

3. If any potential incentives are offered to the hotel developer, it will be through a separate Chapter 380 Economic Development Program Agreement.
4. The pad site will be completed within 24 months after the last building in the multifamily component receives a Certificate of Occupancy
5. A preferred list of hotels will be defined in the Chapter 380 Agreement with the proposed hotel developer. The City shall be involved by having input or giving final approval to the architectural elements of the hotel concept, not to be unreasonably withheld.

Open Space - Block E: Block E will be comprised of the park and trail system (the “**Open Space**”). The Developer will construct all improvements for the Open Space by December 31, 2027. Future maintenance and repairs of the open space shall be at the sole cost and expense of Developer.

c. If the Developer sells the portion of the Property shown as “Block C” on the Concept Plan in **EXHIBIT “C,”** then the Commencement of Construction will adhere to the phases outlined in Section 4.01(b).

d. The Developer shall cause construction of the various phases of the Project to be commenced as set forth above and the Completion of Improvements on or before December 31, 2027, subject to any events of Force Majeure.

Article IV. Grant Payments

Subject to the Developer’s satisfaction of and compliance with all of the terms and conditions of this Agreement, including without limitation the requirements set forth in Article V. The City and CEDC agree to pay the Developer the Grant Payments in the maximum amount of One Million Eight Hundred Fifty Thousand Five Hundred Thirty-One and 92/100 Dollars (\$1,850,531.92) as follows:

a. The City and CEDC agree to an economic development incentive in an amount equal to a Seven Hundred Thousand Five Hundred Thirty-One and 92/100 Dollars (\$700,531.92) reduction in fair market value in the Contract for the sale of the 19.986 acre portion of the Property.

b. The City and CEDC agree to an economic development incentive in an amount equal to one hundred percent (100%) of the Sales and Use Tax Revenue (1.5% sales tax collection, City and CEDC) that is generated by the Developer from the addition of Improvements on the Property during the construction of the Project for a period of thirty-six (36) months from the date of the Commencement of Construction. The amount of payment from Sales and Use Tax Revenue shall not exceed Four Hundred Thousand Dollars (\$400,000.00); and

c. The City agrees to an economic development incentive in the form of a rebate of the building permit fees and inspections fees paid by the Developer for the Project in an amount not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00).

**Article V.
Conditions on Grant Payments**

5.01 **City's and CEDC's Obligations.** The obligation of the City and CEDC to make the Grant Payments 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. **Sales and Use Tax Revenue Grant Payments.** The Sales and Use Tax Grant Payments shall be paid on an annual basis (for the 36-month duration beginning with Commencement of Construction), which will be paid as specified below:

1. Year 1: (a) As a condition of the City and CEDC making the first Grant Payment to the Developer, the Developer must receive site plan approval from the City for the Project on the Property. (b) After the close of the calendar year during the first year of the Term, prior to the City's and CEDC's payment of the grants earned during such calendar year, the Developer shall submit to the City and CEDC, no later than March 31st, all of the following: (1) proof of payment of its tax liability relevant to the computation of a grant amount; (2) its Annual Use Tax Certificate; (3) a copy of the Texas Direct Payment Permit; (4) a letter of request for payment; (5) compliance certificate; and (6) any other documentation or information required by this Agreement or reasonably requested by City and CEDC. Subject to the satisfactory receipt of these items by City, the City and CEDC agree that the Grant Payment will be paid in full to the Developer within forty-five (45) days of satisfactory receipt of the above listed items.

2. Year 2: After the close of the calendar year during the second year of the Term, prior to the City's and CEDC's payment of the grants earned during such calendar year, the Developer shall submit to the City and CEDC, no later than March 31st, all of the following: (1) proof of payment of its tax liability relevant to the computation of a grant amount; (2) its Annual Use Tax Certificate; (3) a copy of the Texas Direct Payment Permit; (4) a letter of request for payment; (5) compliance certificate and; (6) any other documentation or information required by this Agreement or reasonably requested by City and CEDC. Subject to the satisfactory receipt of these items by City and CEDC, the City and CEDC agree that the Grant Payment will be paid in full to the Developer within forty-five (45) days of satisfactory receipt of the above listed items.

3. Year 3: After the close of the calendar year during the third year of the Term, prior to the City's and CEDC's payment of the grants earned during such calendar year, the Developer shall submit to the City and CEDC, no later than

March 31st, all of the following: (1) proof of payment of its tax liability relevant to the computation of a grant amount; (2) its Annual Use Tax Certificate; (3) a copy of the Texas Direct Payment Permit; (4) a letter of request for payment; (5) compliance certificate.; and (6) any other documentation or information required by this Agreement or reasonably requested by City and CEDC. Subject to the satisfactory receipt of these items by City and CEDC, the City and CEDC agrees that the Grant Payment will be paid in full to the Developer within forty-five (45) days of satisfactory receipt of the above listed items.

b. Building Permit and Inspection Fees Grant Payment:

1. Payments. Subject to the terms and conditions of this Agreement, the City agrees to provide to the Developer a Grant Payment in the form of a rebate of the building permit and inspection fees for the Project on the Property. The Developer acknowledges that this Agreement makes an allowance for the building permit and inspection fee Grant Payments which means the City will rebate the Developer for the building permit and inspection fees paid for the Project at the time a Certificate of Occupancy is issued and receipt of payment for (1) the hotel, or (2) 10,000 square feet of retail space, whichever occurs first.

2. Scheduling. Payment shall be made by City to the Developer within thirty (30) days after a Certificate of Occupancy is issued for the earlier of the hotel or a minimum of 10,000 square feet of retail space within the Property and the Developer has paid for the building permit fees. The City is not responsible for paying, waiving, or reducing any building permit fees in excess of \$750,000.00 if the total amount of building permit fees paid by the Developer for the Project exceeds \$750,000.00.

5.02 General Conditions for Grant Payments. Notwithstanding anything contained herein to the contrary or any other provision of this Agreement, the Grant Payments (and/or any portions thereof) shall not be due and payable, and this Agreement may be terminated by the City and CEDC (that is, without any opportunity for cure by the Developer), if the Developer fails to timely comply with and satisfy to the City's and CEDC's reasonable satisfaction any of the conditions to each of the Grant Payments (and/or any portions thereof) as set forth in Section 6.01 above. In any year, if the Developer fails to request the Grant Payment as set forth above, the City and CEDC shall have no obligation to make the Grant Payment to the Developer and the Developer will have forever forfeited the right to receive such payment.

**Article VI.
Developer Obligations**

6.01 Improvements. The Developer shall cause the construction of the Improvements to be built in substantial general conformance with **EXHIBIT "C"** and all other documents approved by the City in connection with the Project. The Commencement of Construction shall be on or before June 6, 2023. The Completion of Improvements shall on or before December 31, 2027. Completion of Improvements shall be evidenced by a Certificate of

Occupancy from the City in accordance with applicable ordinances.

6.02 **Minimum Capital Investment.** The Developer will invest at least \$45,000,000.00 in Total Development Costs for the Project on the Property. All portions of the Project that are intended to be occupied must secure certificates of inspection, compliance, or occupancy, as applicable, by the City or authorities having jurisdiction over the Project by the deadline in Section 7.03.

6.03 **Purchase of Taxable Items.** The Developer shall instruct its contractor to use all reasonable efforts to purchase Taxable Items in connection with this Project from a Local Firm, provided the cost of the Taxable Items is materially similar to the cost from a non-Local Firm, and the time for delivery of the Taxable Items is materially the same as the delivery time from a non-Local Firm.

6.04 **Full-Time Employees.** The Project shall employ a minimum of 15 Full-Time Employees on the Property by December 31, 2027, and make reasonable efforts to hire Corinth residents.

6.05 **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 Project.

6.06 **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 Project and this Agreement.

6.07 **Architectural Standards.** As consideration for the Grant Payments, 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 VII. Retention and Accessibility of Records

7.01 **Records Retention.** The Developer shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. The Developer shall retain such records, and any supporting documentation for the greater of: (a) five

years from the end of the Term; or (b) the period required by other applicable laws and regulations.

7.02 **Accessibility to Records.** The Developer agrees that the City and the CEDC will have the right to review the business records of the Developer that relate solely and specifically to the total number of residential units and the total amount of enclosed space for commercial use; and to the Developer's material compliance with the terms and conditions of this Agreement. Such review shall occur at any reasonable time and upon at least seven (7) days prior written notice to the Developer. To the extent that is reasonably possible, the Developer shall make all such records available in electronic form or otherwise available to be accessed through the internet (the Developer may deliver such information in password protected and encrypted files provided, however, that the Developer shall disclose all information necessary for access by the City and / or the CEDC). Notwithstanding the foregoing or any other provision of this Agreement, the Developer shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that is not necessary to verify the Developer's material compliance with this Agreement and (i) constitutes trade secrets or proprietary information; (ii) in respect of which disclosure is prohibited by law or any binding agreement; or (iii) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product. The rights to access the business records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Developer's business records to authorized City or CEDC representatives shall give the City or CEDC the right to suspend or terminate this Agreement as provided for in Article 13 below, or any portion thereof, for reason of default. All business records relating to this Agreement shall be retained by the Developer for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil, or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries, and open record requests are completed.

Article VIII. Assignment

8.01 **No Assignment Without Consent.** The Developer may not assign any rights, or delegate or sub-contract any of its duties under this Agreement, in whole, or in part, without prior written consent of the City, except the Developer may assign this Agreement to an Affiliate. This assignment is not effective until the Developer has provided documentation establishing the relationship of the Affiliate of the Developer to the satisfaction of the City. This agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

Article IX. Representations and Warranties of the Developer

As of the Effective Date, the Developer represents and warrants to the City and CEDC as follows:

9.01 **Organization.** RCM and RCM - CL are each a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Texas and authorized to conduct business in the State of Texas.

9.02 **Authority.** The execution, delivery, and performance by the Developer of this Agreement are within the Developer's legal authority and have been duly authorized for the Developer.

9.03 **Valid and Binding Obligation.** This Agreement is the legal, valid, and binding obligation of the Developer, and it is enforceable against the Developer in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

9.04 **No Defaults.** To the actual knowledge of the individual signing this Agreement, to the individuals authorizing this Agreement, and the Developer's representatives that negotiated this Agreement, the Developer is not in default in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any other agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

9.05 **Full Disclosure.** Neither this Agreement, nor any schedule or Exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

Article X. Information

10.01 **Information.** Subject to this Article X, the Developer shall, at such times and in such form as the City or CEDC may reasonably request from the Developer, provide all information concerning the performance of the Developer's obligations under this Agreement.

10.02 **Certification Related to Compliance.** The Developer shall submit to the City a duly executed and completed Compliance Certificate signed by an authorized officer or employee of the Developer, together with all supporting documentation necessary to verify the Developer's compliance with this Agreement with each request for Grant Payment.

Article XI. Personal Liability of Public Officials and Limitations on Obligations of the City

11.01 **Personal Liability of Public Officials.** No elected official or employee of the City or CEDC shall be personally responsible for any liability arising under or growing out of this Agreement.

11.02 **Limitations on Obligations of the City.** The Grant Payments made, and any other financial obligation of the City and CEDC hereunder shall be paid solely from lawfully available

funds that are generated from the construction of the Project and that have been budgeted and appropriated each fiscal year (October 1 — September 30) of the City and CEDC during the Term of this Agreement. Under no circumstances shall the City's and CEDC's obligations hereunder be deemed to create any debt within the meaning of any constitutional or other statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City and CEDC shall have no obligation or liability to pay any Grant Payment(s) unless the City and CEDC have received the funds, budgets and appropriates funds to make such payment during the fiscal year of the City and CEDC in which such payment is due.

Article XII. Default, Termination, and Remedies

12.01 **Default.** Non-compliance with any term of this Agreement shall be deemed to be a default. At any time during the Term of this Agreement that the Developer is not in compliance with its obligations under this Agreement, the City or CEDC may send the Developer written notice of such non-compliance, identifying the non-compliance and specifying the deadline for the Developer to cure such default (the "Notice"). The deadline for the Developer to cure such default shall not be less than thirty (30) days from the date of the Notice of non-compliance and may be extended for an additional thirty (30) days upon request by the Developer and written approval by the City or CEDC consenting to the requested extension (the "Cure Period"). If the Developer fails to cure such non-compliance within the Cure Period, then the City or CEDC may, at its sole discretion and option, terminate this Agreement in full at the end of such Cure Period and then the City or CEDC may, at its sole option, seek reimbursement of any and all of the Grant Payments paid to the Developer. EXCEPT AS TO CIRCUMSTANCES ARISING FROM A FORCE MAJEURE EVENT (AS DEFINED BELOW), THE TERM OF THIS AGREEMENT SHALL NOT BE EXTENDED AS A RESULT OF ANY CURE PERIOD AGREED TO BY THE CITY UNDER THIS PARAGRAPH. The City and the CEDC will be entitled to record a lien against the Property to secure the full amounts of any Grant Payments which Developer is required to reimburse if reimbursement is not timely made, provided such lien shall be subordinate to any purchase money liens.

12.02 **Termination for Misrepresentation of Facts and Information.** Notwithstanding any provision for notice of and any opportunity to cure, the City or CEDC may terminate this Agreement immediately by providing written notice to the Developer if the Developer, its officers or signatories to this Agreement, intentionally misrepresent or misrepresented any material fact or information: (i) upon which the City or CEDC relied in entering into this Agreement; (ii) upon which the City or CEDC relies in making any Grant Payment to the Developer; or (iii) as an inducement for the City or CEDC to make any Grant Payment to the Developer.

12.03 **Effect of Event Force Majeure.** A Party will not be deemed to be in breach of this Agreement to the extent such Party's action, inaction, or omission is the result of an event of Force Majeure. The Parties agree to use commercially reasonable efforts to promptly resolve any event of Force Majeure that adversely and materially impacts their performance under this Agreement. An event of Force Majeure only pauses a Party's performance obligation for the duration of the event but does not excuse it. An event of "Force Majeure" means any event or occurrence that is not within the control of a Party and prevents the Party from performing its obligations under this

Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies, or labor through ordinary sources by reason of shortages or priority; labor strike, lockout, or other labor or industrial disturbance; civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake, or other casualty; epidemic; any law, order, regulation, or other action of any governing authority; and any action, inaction, order, ruling moratorium, regulation, statute, condition, or other decision of any governmental agency having jurisdiction over a Party, over this Project, or over a Party's operations.

12.04 **City's or CEDC's Remedies.** Upon breach of any obligation under this Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the City or CEDC may pursue such remedies as are available at law or in equity for breach of contract. Similarly, with regard to violations of any applicable ordinances of the City, the City may seek such relief as is available for violation of such ordinances, including fines and injunctive relief.

12.05 **Offsets.** The City may deduct from any Grant Payments due to the Developer, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City.

12.06 **Developer's Rights.** The Developer has the right to terminate this Agreement for any reason by delivering written notice to the City and CEDC at least seven (7) days prior to the desired termination date, provided, however, that if the Developer has received any of the Grant Payments from the City and CEDC at the time of such termination by the Developer, upon the effective date of such notice of termination, the Developer shall remit to the City and CEDC the full amount of the Grant Payments.

12.07 **Effect of Termination/Survival of Obligations.** The rights, responsibilities, and liabilities of the Parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the Grant Payment refund provision(s), maintenance of business records, and access thereto.

Article XIII. Miscellaneous

13.01 **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.

13.02 **Further Actions.** The City, CEDC, and the Developer agree to do all things reasonably necessary or appropriate to carry out the objectives, terms, and provisions of this Agreement, and to aid and assist each other in carrying out such objectives, terms, and provisions, provided that the City and/or CEDC shall not be required to spend any money or to have further

obligations other than to reimburse the Developer pursuant to the terms of this Agreement.

13.03 **Amendments.** This Agreement may only be amended, altered, or terminated by written instrument signed by all the Parties.

13.04 **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

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

13.06 **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.

13.07 **Indemnification.** THE PAYMENT OF ALL INDEBTEDNESS AND OBLIGATIONS INCURRED BY THE DEVELOPER WITH RESPECT TO THE EXECUTION OF THE PROJECT AND ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE SOLELY THE OBLIGATION OF THE DEVELOPER. THE CITY OR CEDC SHALL NOT BE OBLIGATED TO PAY ANY INDEBTEDNESS OR OBLIGATIONS OF THE DEVELOPER. THE DEVELOPER HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD THE CITY, AND THE CITY'S ELECTED OFFICIALS AND EMPLOYEES, AND THE CEDC, ITS OFFICIALS AND EMPLOYEES, HARMLESS FROM AND AGAINST (I) ANY INDEBTEDNESS OR OBLIGATIONS OF THE DEVELOPER WITH RESPECT TO THE EXECUTION OF THE PROJECT, OR ANY OTHER OBLIGATION OF THE DEVELOPER UNDER THIS AGREEMENT OTHER THAN THE GRANT PAYMENTS TO THE DEVELOPER AS EXPRESSLY PROVIDED HEREIN; OR (II) ANY OTHER LOSS, CLAIM, DEMAND, LAWSUIT, LIABILITY, OR DAMAGES ARISING FROM THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE DEVELOPER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR (III) BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT, OR AGREEMENT OF THE DEVELOPER CONTAINED IN THIS AGREEMENT, WITHOUT REGARD TO ANY NOTICE OR CURE PROVISIONS. THE DEVELOPER'S INDEMNIFICATION OBLIGATION HEREUNDER SHALL INCLUDE PAYMENT OF THE CITY'S OR CEDC'S REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES WITH RESPECT THERETO.

13.08 **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 AND CEDC:

City of Corinth
3300 Corinth Parkway
Corinth, Texas 76208
Attention: City Manager
Telephone: (940) 498 – 3200
E-mail: Scott.Campbell@cityofcorinth.com

WITH A COPY TO:

City of Corinth
3300 Corinth Parkway
Corinth, Texas 76208
Attention: Director of Economic Development
Telephone: (940) 498 – 3295
E-mail: Elise.Back@cityofcorinth.com

AND

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

THE DEVELOPER:

Realty Capital Management, L.L.C.
909 Lake Carolyn Parkway Suite 150
Irving, Texas 75039
Attn: Tim Coltart
Telephone: (214-553-4121
E-mail: TimColtart@realtycapital.com

WITH A COPY TO:

Andy Rogers
Kelly Hart & Hallman LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: 817-878-3546

Email: andy.rogers@kellyhart.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.

14.08 **Applicable Law and Venue.** This Agreement is subject to the provisions of the City Charter and ordinances of the City, as amended or modified. 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 federal or state court of competent jurisdiction located in Denton County, Texas.

14.09 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties

14.10 **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, CEDC, and the Developer or permitted assignees or successors of the City, CEDC, and the Developer, except that the indemnification and hold harmless obligations by the Developer provided for in this Agreement shall also inure to the benefit of the indemnitees named therein.

14.11 **No Partnership or Joint Venture.** Nothing contained in this Agreement is intended by the Parties to create any partnership or joint venture between the Parties, and any such implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent or representative of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

14.12 **Immunity.** The City or CEDC, 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.

14.13 **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 this Project, 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 Payments 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.

14.14 **Community Involvement.** Although not an event of default or 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.

14.15 **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.

14.16 **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, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

(signatures on the following pages)

ATTEST:

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

DocuSigned by:
Lana Wylie

Lana Wylie, City Secretary

DocuSigned by:
Scott Campbell

Scott Campbell, City Manager

Date: 3/6/2023

APPROVED AS TO FORM:

DocuSigned by:
Patricia Adams

Patricia A. Adams, City Attorney

**CORINTH ECONOMIC
DEVELOPMENT
CORPORATION,** a Type B corporation

Grady Ray

Grady Ray, Chair

Date: 3/3/2023

**REALTY CAPITAL MANAGEMENT,
L.L.C.,** a Texas limited liability company

DocuSigned by:
Tim Coltart
02561F0BC6CA49F...

By: Tim Coltart

Its: Managing Director

Date: 4/20/2023

RCM Corinth Land, L.L.C.,
a Texas limited liability company

DocuSigned by:
Tim Coltart
02561F0BC6CA49F...

By: Tim Coltart

Its: Managing Director

Date: 4/20/2023

EXHIBIT "A"
LEGAL DESCRIPTION

BEING 20.859 acres of land located in the H. GARRISON SURVEY, Abstract No. 507, City of Corinth, Denton County, Texas, and being a portion of the tract of land conveyed to the Town of Corinth, by the deed recorded in Volume 608, Page 158, of the Deed Records of Denton County, Texas, and all of the tract of land conveyed to Corinth Economic Development Corporation, by the deed recorded in Instrument No. 2019-69270, of the Official Public Records of Denton County, Texas, and all of the tract of land conveyed to the City of Corinth, by the deed recorded in Document No. 2021-69324, of the Official Public Records of Denton County, Texas. Said 20.859 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found lying in the Southwest right-of-way line of Interstate Highway No. 35 E and the North boundary line of the tract of land conveyed to Minerva Partners, Ltd., by the deed recorded in Instrument No. 2004-163301, of the official Public Records of Denton County, Texas;

THENCE along the Southeasterly and South boundary line of said Corinth Economic Development Corporation Tract and the Town of Corinth Tract, with the North line of said Minerva Partner's, Ltd. Tract, as follows:

S 47° 56' 03" W 93.62 feet, to a 1/2" iron rod marked "Brittain & Crawford" set;
S 47° 23' 48" W 478.92 feet, to a point on top of a manhole;

THENCE N 75° 06' 37" W 379.31 feet, to a 1/2" iron rod found;

THENCE S 76° 45' 21" W 255.77 feet, to a 1/2" iron rod marked "Brittain & Crawford" set at the Southwest corner of aforesaid Town of Corinth Tract, lying in the East right-of-way line of S. Corinth Street;

THENCE along the current West boundary line of said Town of Corinth Tract, the West boundary line of said Corinth Economic Development Corporation Tract, and the East right-of-way line of S. Corinth Street, as follows:

N 00° 21' 58" E 69.60 feet, to a 1/2" iron rod marked "Brittain & Crawford" set;

N 00° 23' 50" E 12.76 feet, to a 1/2" iron rod marked "Brittain Crawford" set;

N 00° 10' 08" W 196.46 feet, to a 1/2" iron rod found at the Northwest corner of said Town of Corinth Tract and the Southwest corner of said Corinth Economic Development Corporation Tract;

N 00° 11' 53" W 625.17 feet, to a 1/2" iron rod found marked "R.P.L.S. 5687" at the beginning of a curve to the right;

NORTHEASTERLY 301.43 feet, along said curve to the right, having a radius of 510.00 feet, a central angle of 33° 51' 50", and a chord bearing N 16° 50' 08" E 297.06 feet, to a 1/2" iron rod marked "X" in concrete found at the end of said curve;

S 55° 16' 33" E 5.70 feet, to a 1/2" iron rod marked "Brittain & Crawford" set being the Southwest corner of the aforesaid tract of land conveyed to the City of Corinth, at the beginning of a curve to the right;

THENCE NORTHEASTERLY 142.10 feet, along said curve to the right, having a radius of 500.00 feet, a central angle of 16° 17' 10", and a chord bearing N 42° 55' 54" E 141.62 feet, to a 1/2" iron rod marked "Brittain & Crawford" set at the end of said curve and the beginning of another curve to the right, at the intersection of the East right-of-way line of S. Corinth Street and the Southwest right-of-way line of aforesaid Interstate Highway No. 35 E;

THENCE SOUTHEASTERLY 149.06 feet, along said curve to the right, having a radius of 95.00 feet, a central angle of 89° 54' 00", and a chord bearing S 83° 58' 36" E 134.23 feet, to a 1/2" iron rod marked "Brittain & Crawford" set at the end of said curve;

THENCE S 39° 01' 57" E 185.37 feet, along the Northeast boundary line of said City of Corinth Tract and the Southwest right-of-way line of Interstate Highway No. 35 E, to a 1/2" iron rod found marked "G&A" at the Southeast corner of said City of Corinth Tract;

THENCE continuing along the Northeast boundary line of said Corinth Economic Development Corporation Tract and the Southwest right-of-way line of Interstate Highway No. 35 E, as follows:

S 38° 29' 57" E 426.54 feet, to a Texas Department of Transportation monument found;

S 38° 51' 31" E 300.05 feet, to a 1/2" iron rod marked "G&A" found;

S 38° 33' 18" E 99.88 feet, to a Texas Department of Transportation monument found;

S 32° 12' 06" E 161.99 feet, to the POINT OF BEGINNING containing 20.859 acres (908,620 square feet) of land.

EXHIBIT "B"
PROPERTY



EXHIBIT "C"

CONCEPT PLAN

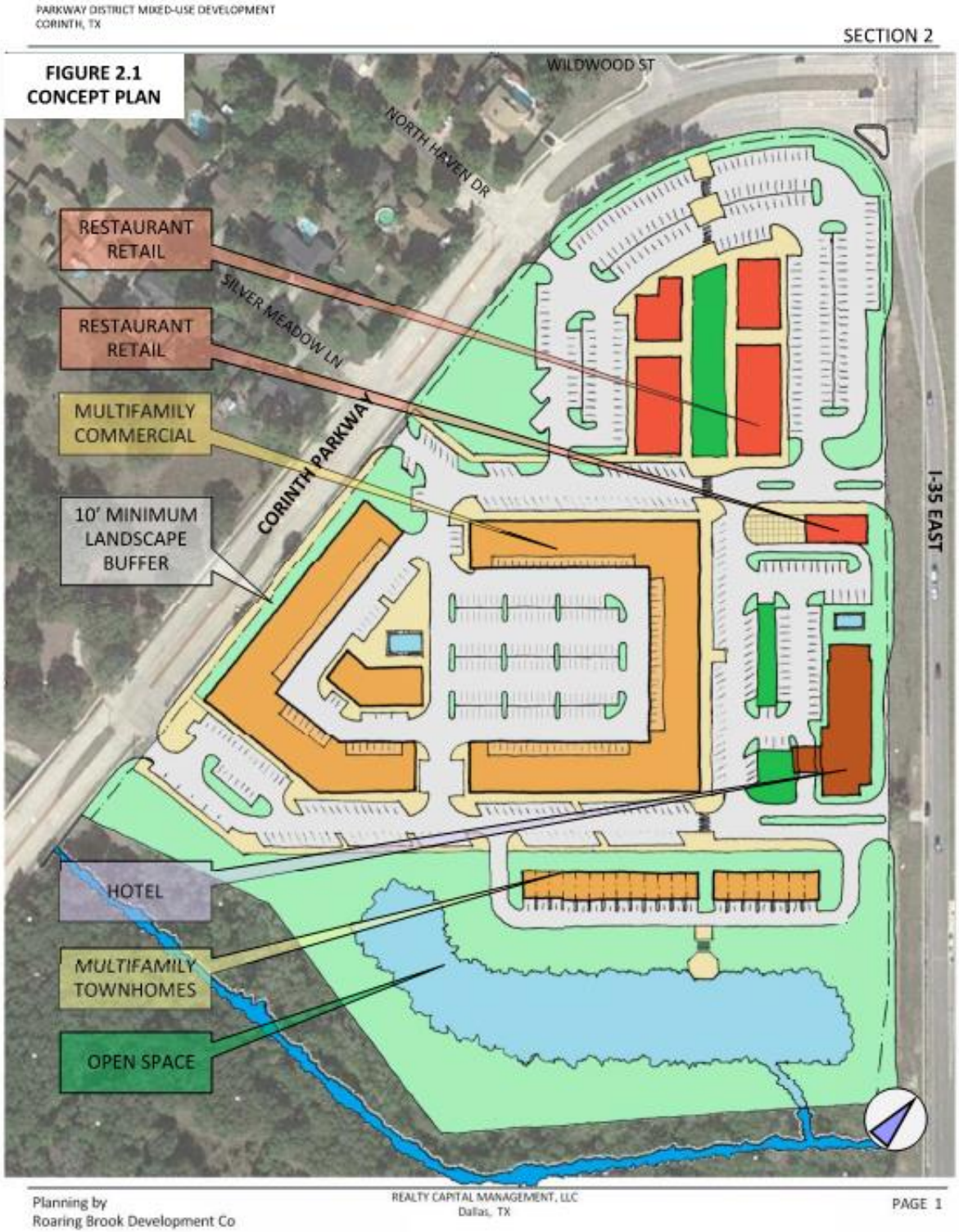


EXHIBIT "D"

DEPICTED BLOCKS

