

Location: 805, 807, 809 W Harris Rd

Property Owner: PHC EQUITIES, LLC.

1016 W. HARRIS RD.

ARLINGTON, TEXAS 76001

About the Project

PHC Equities, LLC, also known as P& H Casters, is a local company with multiple locations in Arlington, totaling approximately 62,000 sf. They were founded in CA in 1969, moved to Texas in 1990 and have been in Arlington more than 25 years. In 2008, they purchased their current 58,000 sf distribution facility at 1016 W. Harris Rd. and later acquired a manufacturing facility located at 1208 Commercial Blvd. They are the #1 supplier of casters for shopping carts, medical equipment and other rolling objects in the U.S. and are currently doing business in Latin America, Australia, and Canada. The proposed project will consolidate and expand manufacturing, office, distribution and warehouse in a single location; currently operating in two separate buildings.

Goals of the Project

Support the company's presence and successful operations in Arlington for years to come. Promote local economic development and stimulate business and commercial activity and retain jobs within the City of Arlington.

Current Status

In December 2020, City Council approved Resolution No. 20-327 authorizing the Chapter 380 Agreement with PHC Equities, LLC.

Benefit to City

Construction of a new 160,000 SF industrial building; job retention; property tax base enhancement

Year Approved by Council	2021
Base Year	2020
Beginning Year	2021
Ending Year	2029
Duration	14 years
Base Year Value	\$ 865,000
Property Tax Account Number(s)	04243811, 04521218, 04492110
Total Reimbursement Grant Allowed	\$ 410,000
Total Estimated Investment by Company	\$ 10,000,000
 Grant Paid to Company To Date	 \$ 47,984

Criteria Evaluated Complete Project no later than December 31, 2021

- Project must result in Added Taxable Value of at least \$10 million by Tax Year 2022 and maintain through remaining term
- Create and fill 50 Jobs by tax year 2022 and maintain through term
- Ensure all activity on the Premises conforms to applicable building codes, zoning ordinances and all other state, federal, or local laws, ordinances and regulations
- Do not fail to render for taxation any business personal property owned by Owner and located within the City of Arlington
- Do not allow ad valorem taxes to become delinquent on any property located within the City of Arlington
- Use diligent efforts to purchase goods and services from Arlington businesses; develop policy with MWBE goal of 30% and provide reporting of efforts to achieve such goal

Incentives Allowed	Reimbursement Grant not to exceed \$410,000.00
	Development fee waivers

Resolution No. 20-327

A resolution authorizing the execution of a Chapter 380 Grant Agreement by and between PHC Equities, LLC, and the City of Arlington, Texas relative to the construction of a new 160,000 square-foot industrial building located at 805, 807, and 809 W. Harris Road in Arlington, Texas

WHEREAS, CITY has found that providing a program consisting of a grant of funds to PHC Equities, LLC (hereinafter referred to as "OWNER") in exchange for OWNER'S completion of the project proposed by OWNER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and,

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute a Chapter 380 Grant Agreement with OWNER to provide certain economic incentives associated with the construction of a new 160,000 square-foot industrial building located at 805, 807, and 809 W. Harris Road in Arlington, Texas.

III.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

IV.

A substantial copy of the Chapter 380 Grant Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 1st day of December, 2020, by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney


BY  _____

Exhibit "A"



THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

Chapter 380 Grant Agreement

THIS Agreement is executed on _____, 2020, by and between **PHC EQUITIES, LLC**, an entity duly authorized to do business in the State of Texas, acting by and through its authorized officer (hereafter referred to as “**OWNER**”), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as “**CITY**”).

WITNESSETH:

WHEREAS, CITY has found that providing a program of incentives to OWNER in exchange for OWNER’s development of a 160,000 square-foot industrial building will promote local economic development and stimulate business and commercial activity and retain jobs within the City of Arlington (hereafter referred to as the “Program” or “Incentive Program”); and

WHEREAS, the CITY has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in establishment and administration of the Program contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the Program provided herein; NOW THEREFORE;

The CITY and OWNER, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant, and contract as set forth below:

I.
Definitions

- A. “Added Taxable Value” is defined as the taxable value of the Premises above the Base Year Value, as appraised by the Tarrant Appraisal District.
- B. “Base Year Value” is defined as the tax year 2020 taxable value of the Premises as finally determined by Tarrant Appraisal District, which shall be \$865,000.00 (TAD Account Numbers 04243811, 04521218, 04492110).
- C. “Job” is defined as a permanent, full-time employment position that results in actual paid employment of an employee, not independent contractor, at the Project of at least 1,820 hours per position in a year. It shall not include part time employees.

- D. "Premises" are defined as the approximately 10 acres of land, addressed as of the execution date as 805, 807, and 809 W. Harris Road and to be subsequently replatted and addressed as 807 W. Harris Road, as depicted in **Exhibit "A"** attached hereto and incorporated herein for all purposes.
- E. "Project" is defined as development of a 160,000 square-foot industrial building on the Premises, as depicted in **Exhibit "B"** attached hereto and incorporated herein for all purposes.

II.
Term

This Agreement shall be effective on the date of execution and shall expire on December 31, 2029 (the "Term"), unless otherwise sooner terminated in accordance with the terms of this Agreement.

III.
Improvement Conditions and Requirements

- A. OWNER shall complete the Project by no later than December 31, 2021. Completion of the Project shall be evidenced by the issuance of a final certificate of occupancy by the CITY for the Project.
- B. OWNER's completion of the Project must result in Added Taxable Value of at least Ten Million Dollars (\$10,000,000.00) no later than the tax year 2022. Further, the Added Taxable Value shall remain at or above Ten Million Dollars (\$10,000,000.00) for the remainder of the Term of this Agreement.
- C. OWNER shall create and fill no less than Fifty (50) Jobs within the Project and Premises by tax year 2022 and maintain such Jobs throughout the Term of this Agreement.
- D. Throughout the Term, all activity on the Premises shall conform to the applicable building codes, zoning ordinances, and all other state, federal, or local laws, ordinances, and regulations. OWNER shall apply for and obtain all necessary governmental permits and approvals for construction and operation of the Project.
- E. Throughout the Term, OWNER shall not fail to render for taxation any property owned by OWNER and located within the City of Arlington.
- F. Throughout the Term, OWNER shall not allow the ad valorem taxes owed to CITY on any property owned by OWNER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.

- G. During design and construction of the Project, OWNER agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. OWNER also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by OWNER of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for design and construction of the Project, which such policy shall contain reasonable exclusions. Upon completion of the Project OWNER shall provide the CITY with a report detailing its progress towards the twenty-five percent (25%) goal. OWNER's failure to attain such twenty-five percent (25%) goal despite exercising commercially reasonable efforts to attain same shall not constitute a breach of this Agreement.

IV. Incentive Program

In exchange for OWNER's development of the Project, CITY agrees to provide the following Incentive Program to OWNER:

- A. Fee Waiver. If all applicable Improvement Conditions and Requirements set forth in Article III are satisfied, to the extent applicable at that point in time, provided however, the completion of the Project described in Section III.A. of this Agreement shall not be required before the waivers described hereinafter commence, CITY agrees to waive all development fees owed to the CITY for development of the Project. Development fees shall include plan review fees, building permit and inspection fees, park fees, irrigation review and inspection fees, early grading permit fees, landscape plan review fees, public utilities inspection fees, fire alarm permit and inspection fees, sprinkler system permit and inspection fees, fire pump permit and inspection fees, certificate of occupancy fees, water and sewer tap fees, water activation fees, meter and detector check fees, water and sewer impact fees, and roadway impact fees.
- B. Annual Grant. If all Improvement Conditions and Requirements set forth in Article III are satisfied, CITY agrees to provide an annual grant to OWNER beginning in 2023 and ending when the cumulative total amount of all fees waived in accordance with Section IV.A. and all annual grant payments made in accordance with this Section IV.B. equals Four Hundred and Ten Thousand Dollars (\$410,000.00) or in 2029, whichever occur first. Each annual grant payment shall be determined annually and calculated as follows: an amount equal to eighty percent (80%) of the ad valorem taxes paid by OWNER to the CITY in the previous tax year for the Added Taxable Value. All annual grant payments will be paid by CITY to OWNER on or before July 1 of each year, provided the Improvement Conditions and Requirements set forth in Article III have been

satisfied and provided OWNER has provided the required certification specified herein.

- C. Under no circumstances will the CITY provide to OWNER fee waivers and annual grant payments which total more than Four Hundred and Ten Thousand Dollars (\$410,000.00).

V.

Annual Certification, Records, Audits and Inspections

- A. Annual Certification. By May 15th of each year OWNER must certify compliance with the Improvement Conditions and Requirements set forth in Article III on a form provided by the CITY, along with any additional records and information as specified in Section V.B. below. Failure to timely submit the annual certification or to provide any requested additional records or information after notice and opportunity to cure, as provided herein, shall waive OWNER's right to the Incentive Program.
- B. Additional Records and Information - Throughout the Term of this Agreement, OWNER shall furnish CITY any additional records and information reasonably requested to support the Improvement Conditions and Requirements set forth in Article III of this Agreement.
- C. Right to Audit Books and Records - CITY shall have the right to audit the books and records of OWNER related to the Project and Incentive Program. CITY shall notify OWNER in advance in writing of their intent to audit in order to allow OWNER adequate time to make such books and records available.
- D. Inspection - At all times throughout the Term of this Agreement, CITY shall, upon prior written notice to Owner, have reasonable access to the Premises for the purpose of inspecting the Premises to ensure that the Project is constructed, installed, maintained, and operated in accordance with the terms of this Agreement. All inspections shall be conducted in a manner as to not unreasonably interfere with the operation of the Premises. The inspections shall be conducted within a reasonable time period after OWNER's receipt of written notice by CITY.

VI.

Use of Premises

The Premises at all times shall be used in a manner that is consistent with CITY's Unified Development Code and all other applicable federal, state, and local laws.

VII.
Breach and Recapture

- A. **Breach** - A breach of this Agreement by OWNER may result in termination or modification of this Agreement and recapture by CITY of fees waived and annual grant payments provided under Article IV. OWNER's failure to satisfy any of the Conditions and Requirements as specified in Section III above, after written notice and opportunity to cure, shall constitute a breach of this Agreement.
- B. **Notice of Breach** - In the event that CITY makes a reasonable determination that OWNER has breached this Agreement, then CITY shall give OWNER written notice of such breach. OWNER has sixty (60) days following receipt of said written notice to cure such breach, or this Agreement may be terminated by CITY, and recapture of fees waived, and annual grant payments provided under Article IV may occur. Notice of breach and opportunity to cure shall be in writing and shall be delivered by personal delivery or certified mail to OWNER at its address provided in Section X of this Agreement.
- C. **Recapture** - During the Term of this Agreement, should OWNER commit and fail to timely cure a breach of this Agreement, CITY may terminate this Agreement and recapture all fees waived and annual grant payments provided under Article IV for the two (2) year period prior to the occurrence of such breach. It shall be the duty of CITY to determine whether to require recapture and to demand payment of such. Repayment of annual grant payments and waived fees shall become due sixty (60) days following receipt of such demand. The rights of CITY to require recapture and demand repayment of annual grant payments made and fees waived, and the obligation of OWNER to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the CITY, to initiate any litigation necessary to pursue payment of recaptured annual grant payments and fees waived pursuant to this Agreement.

VIII.
Undocumented Workers

OWNER covenants and certifies that OWNER does not and will not knowingly employ an undocumented worker at the Project as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if OWNER is convicted of a violation under 8 U.S.C. Section 132a(f), OWNER shall repay to the CITY the full amount of the fees waived and annual grant payments provided under Article IV of this Agreement, plus 10% per annum from the date such fees were waived or grant payments were made. Repayment shall be paid within 120 days after the date following such conviction for which OWNER receives notice of violation from the CITY as provided by 2264.101(c) of the Texas Government Code.

IX.
Effect of Sale or Lease of Property

The Incentive Program authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Project or Premises unless such assignment is approved in writing by the CITY with approval of the City Council, which approval shall not be unreasonably withheld.

X.
Notice

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

OWNER: PHC Equities, LLC

CITY: City of Arlington
 Attention: City Manager's Office
 Post Office Box 90231
 Arlington, Texas 76004-3231

cc: City of Arlington
 Attention: City Attorney's Office
 Post Office Box 90231
 Arlington, Texas 76004-3231

XI.
City Council Authorization

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

XII.
Severability

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

XIII.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of OWNER, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

XIV.
Owner's Standing

OWNER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

XV.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

XVI.
Indemnification

It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and CITY assumes no responsibility or liability to third parties in connection therewith, and OWNER agrees to indemnify and hold harmless CITY from any such responsibility or liability. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently, and the OWNER assumes no responsibility or liability to third parties in connection therewith.

XVII.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which

are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

XVIII.

No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

XIX.

Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XX.

Successors and Assigns

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

PHC EQUITIES, LLC

BY _____
Name _____
Title _____
Date _____

WITNESS:

CITY OF ARLINGTON, TEXAS

BY _____
JIM PARAJON
Deputy City Manager
Date _____

ATTEST:

ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY _____

THE STATE OF TEXAS §
§
COUNTY OF _____ §

PHC EQUITIES, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **PHC EQUITIES, LLC**, an entity duly authorized to do business in the State of Texas, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2020.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2020.

Notary Public in and for
The State of Texas

My Commission Expires

Notary's Printed Name

Exhibit "A"
PREMISES

1
2
3
4

5
6
7
8



Exhibit "B"
PROJECT



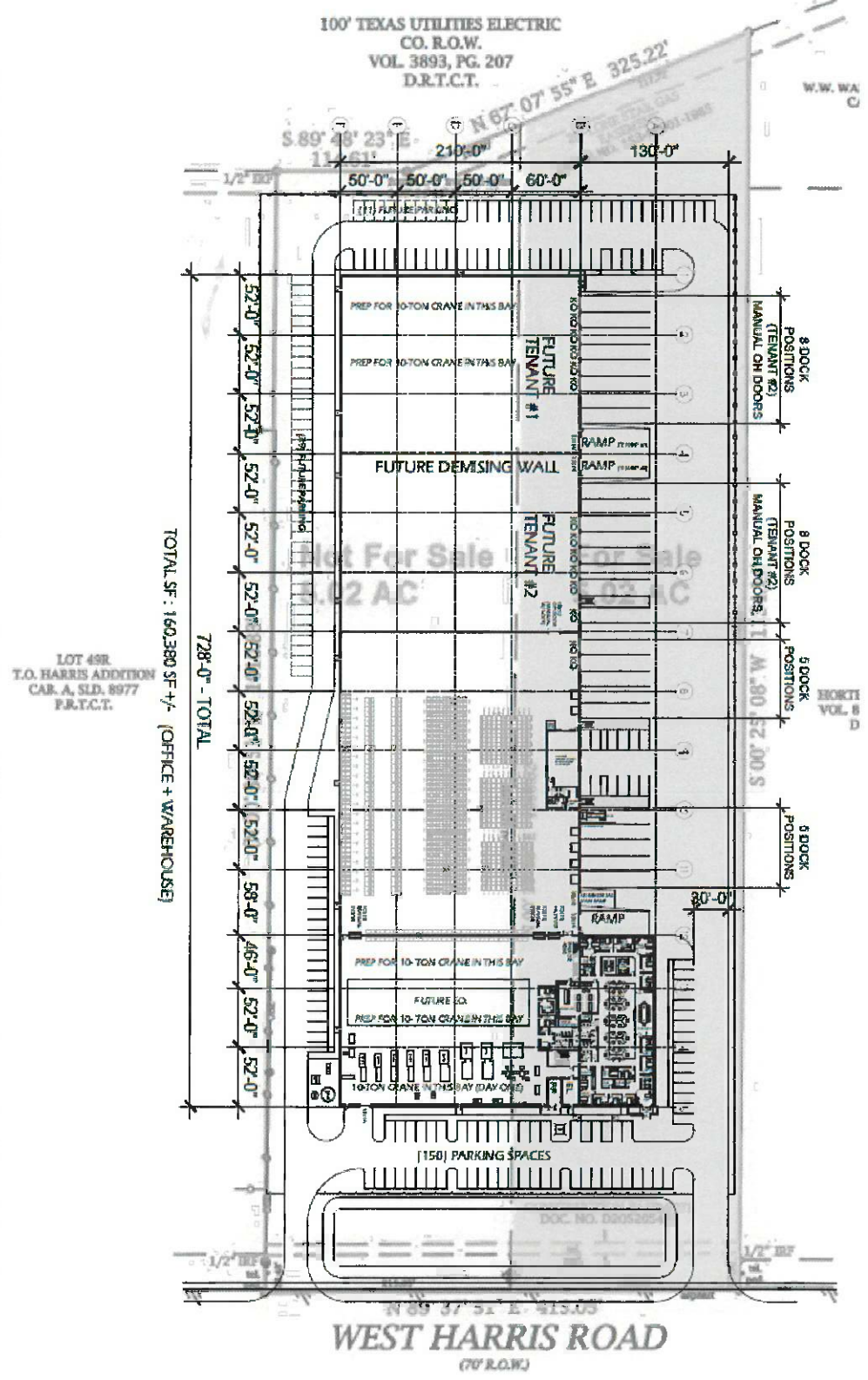
Proposed Warehouse
Arlington, TX

SCALE: 1" = 40'-0" (1/8" = 1')

Preliminary Site Plan - West Harris
DATE: 02/27/20
09/30/2020



A.1



LOT 498
T.O. HARRIS ADDITION
CAR. A. SLD. 8977
P.R.T.C.T.

TOTAL SF: 160,380 SF +/- (OFFICE + WAREHOUSE)

728'-0" - TOTAL

WEST HARRIS ROAD
(70' R.O.W.)

- D. "Premises" are defined as the approximately 10 acres of land, addressed as of the execution date as 805, 807, and 809 W. Harris Road and to be subsequently replatted and addressed as 807 W. Harris Road, as depicted in **Exhibit "A"** attached hereto and incorporated herein for all purposes.
- E. "Project" is defined as development of a 160,000 square-foot industrial building on the Premises, as depicted in **Exhibit "B"** attached hereto and incorporated herein for all purposes.

II.
Term

This Agreement shall be effective on the date of execution and shall expire on December 31, 2029 (the "Term"), unless otherwise sooner terminated in accordance with the terms of this Agreement.

III.
Improvement Conditions and Requirements

- A. OWNER shall complete the Project by no later than December 31, 2021. Completion of the Project shall be evidenced by the issuance of a final certificate of occupancy by the CITY for the Project.
- B. OWNER's completion of the Project must result in Added Taxable Value of at least Ten Million Dollars (\$10,000,000.00) no later than the tax year 2022. Further, the Added Taxable Value shall remain at or above Ten Million Dollars (\$10,000,000.00) for the remainder of the Term of this Agreement.
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- E. Throughout the Term, OWNER shall not fail to render for taxation any property owned by OWNER and located within the City of Arlington.
- F. Throughout the Term, OWNER shall not allow the ad valorem taxes owed to CITY on any property owned by OWNER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.

- G. During design and construction of the Project, OWNER agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. OWNER also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by OWNER of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for design and construction of the Project, which such policy shall contain reasonable exclusions. Upon completion of the Project OWNER shall provide the CITY with a report detailing its progress towards the twenty-five percent (25%) goal. OWNER's failure to attain such twenty-five percent (25%) goal despite exercising commercially reasonable efforts to attain same shall not constitute a breach of this Agreement.

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In exchange for OWNER's development of the Project, CITY agrees to provide the following Incentive Program to OWNER:

- A. Fee Waiver. If all applicable Improvement Conditions and Requirements set forth in Article III are satisfied, to the extent applicable at that point in time, provided however, the completion of the Project described in Section III.A. of this Agreement shall not be required before the waivers described hereinafter commence, CITY agrees to waive all development fees owed to the CITY for development of the Project. Development fees shall include plan review fees, building permit and inspection fees, park fees, irrigation review and inspection fees, early grading permit fees, landscape plan review fees, public utilities inspection fees, fire alarm permit and inspection fees, sprinkler system permit and inspection fees, fire pump permit and inspection fees, certificate of occupancy fees, water and sewer tap fees, water activation fees, meter and detector check fees, water and sewer impact fees, and roadway impact fees.
- B. Annual Grant. If all Improvement Conditions and Requirements set forth in Article III are satisfied, CITY agrees to provide an annual grant to OWNER beginning in 2023 and ending when the cumulative total amount of all fees waived in accordance with Section IV.A. and all annual grant payments made in accordance with this Section IV.B. equals Four Hundred and Ten Thousand Dollars (\$410,000.00) or in 2029, whichever occur first. Each annual grant payment shall be determined annually and calculated as follows: an amount equal to eighty percent (80%) of the ad valorem taxes paid by OWNER to the CITY in the previous tax year for the Added Taxable Value. All annual grant payments will be paid by CITY to OWNER on or before July 1 of each year, provided the Improvement Conditions and Requirements set forth in Article III have been

satisfied and provided OWNER has provided the required certification specified herein.

- C. Under no circumstances will the CITY provide to OWNER fee waivers and annual grant payments which total more than Four Hundred and Ten Thousand Dollars (\$410,000.00).

V.

Annual Certification, Records, Audits and Inspections

- A. Annual Certification. By May 15th of each year OWNER must certify compliance with the Improvement Conditions and Requirements set forth in Article III on a form provided by the CITY, along with any additional records and information as specified in Section V.B. below. Failure to timely submit the annual certification or to provide any requested additional records or information after notice and opportunity to cure, as provided herein, shall waive OWNER's right to the Incentive Program.
- B. Additional Records and Information - Throughout the Term of this Agreement, OWNER shall furnish CITY any additional records and information reasonably requested to support the Improvement Conditions and Requirements set forth in Article III of this Agreement.
- C. Right to Audit Books and Records - CITY shall have the right to audit the books and records of OWNER related to the Project and Incentive Program. CITY shall notify OWNER in advance in writing of their intent to audit in order to allow OWNER adequate time to make such books and records available.
- D. Inspection - At all times throughout the Term of this Agreement, CITY shall, upon prior written notice to Owner, have reasonable access to the Premises for the purpose of inspecting the Premises to ensure that the Project is constructed, installed, maintained, and operated in accordance with the terms of this Agreement. All inspections shall be conducted in a manner as to not unreasonably interfere with the operation of the Premises. The inspections shall be conducted within a reasonable time period after OWNER's receipt of written notice by CITY.

VI.

Use of Premises

The Premises at all times shall be used in a manner that is consistent with CITY's Unified Development Code and all other applicable federal, state, and local laws.

VII.
Breach and Recapture

- A. Breach - A breach of this Agreement by OWNER may result in termination or modification of this Agreement and recapture by CITY of fees waived and annual grant payments provided under Article IV. OWNER's failure to satisfy any of the Conditions and Requirements as specified in Section III above, after written notice and opportunity to cure, shall constitute a breach of this Agreement.
- B. Notice of Breach - In the event that CITY makes a reasonable determination that OWNER has breached this Agreement, then CITY shall give OWNER written notice of such. OWNER has sixty (60) days following receipt of said written notice to cure such breach, or this Agreement may be terminated by CITY, and recapture of fees waived, and annual grant payments provided under Article IV may occur. Notice of breach and opportunity to cure shall be in writing and shall be delivered by personal delivery or certified mail to OWNER at its address provided in Section X of this Agreement.
- C. Recapture - During the Term of this Agreement, should OWNER commit and fail to timely cure a breach of this Agreement, CITY may terminate this Agreement and recapture all fees waived and annual grant payments provided under Article IV for the two (2) year period prior to the occurrence of such breach. It shall be the duty of CITY to determine whether to require recapture and to demand payment of such. Repayment of annual grant payments and waived fees shall become due sixty (60) days following receipt of such demand. The rights of CITY to require recapture and demand repayment of annual grant payments made and fees waived, and the obligation of OWNER to pay such, shall survive termination of this Agreement. The City Attorney has the authority, on behalf of the CITY, to initiate any litigation necessary to pursue payment of recaptured annual grant payments and fees waived pursuant to this Agreement.

VIII.
Undocumented Workers

OWNER covenants and certifies that OWNER does not and will not knowingly employ an undocumented worker at the Project as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if OWNER is convicted of a violation under 8 U.S.D. Section 132a(f), OWNER shall repay to the CITY the full amount of the fees waived and annual grant payments provided under Article IV of this Agreement, plus 10% per annum from the date such fees were waived or grant payments were made. Repayment shall be paid within 120 days after the date following such conviction for which OWNER receives notice of violation from the CITY as provided by 2264.101(c) of the Texas Government Code.

IX.
Effect of Sale or Lease of Property

The Incentive Program authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Project or Premises unless such assignment is approved in writing by the CITY with approval of the City Council, which approval shall not be unreasonably withheld.

X.
Notice

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

OWNER: PHC Equities, LLC
 1016 W. HANUS RD
 ARLINGTON, TX
 76001

CITY: City of Arlington
 Attention: City Manager's Office
 Post Office Box 90231
 Arlington, Texas 76004-3231

cc: City of Arlington
 Attention: City Attorney's Office
 Post Office Box 90231
 Arlington, Texas 76004-3231

XI.
City Council Authorization

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

XII.
Severability

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

XIII.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of OWNER, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the grant payments in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

XIV.
Owner's Standing

OWNER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

XV.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

XVI.
Indemnification

It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and CITY assumes no responsibility or liability to third parties in connection therewith, and OWNER agrees to indemnify and hold harmless CITY from any such responsibility or liability. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently, and the OWNER assumes no responsibility or liability to third parties in connection therewith.

XVII.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which

are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

XVIII.
No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by the parties.

XIX.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

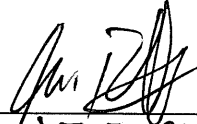
XX.
Successors and Assigns

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

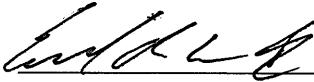
[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above.

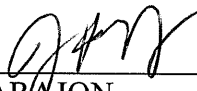
PHC EQUITIES, LLC

BY 
Name JESSE PELTIER
Title PRESIDENT
Date MARCH 17, 2021

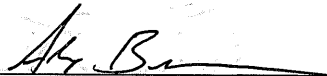
WITNESS:



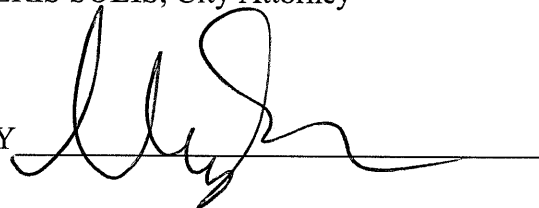
CITY OF ARLINGTON, TEXAS

BY 
JIM PARAJON
Deputy City Manager
Date 4.9.21

ATTEST:


ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

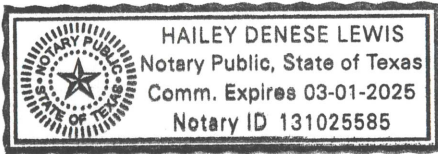
BY 

THE STATE OF TEXAS §
§
COUNTY OF Tarrant §

PHC EQUITIES, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Jose Peltier, known to me (or proved to me on the oath of _____ or through personally known (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **PHC EQUITIES, LLC**, an entity duly authorized to do business in the State of Texas, and as the President thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 17 day of March, 2020.



My Commission Expires _____

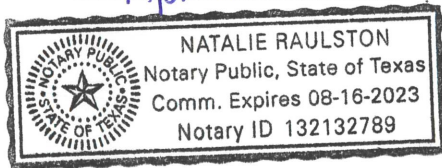
Hailey Lewis
Notary Public in and for
The State of Texas
Hailey Lewis
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 9th day of April, 2020.



My Commission Expires 08-16-2023

Natalie Raulston
Notary Public in and for
The State of Texas
Natalie Raulston
Notary's Printed Name

Exhibit "A"
PREMISES



Exhibit "B"
PROJECT

