

RESOLUTION NO. 12-06-2022B

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS APPROVING THE ACTIONS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, WHICH VOTED TO APPROVE A PERFORMANCE AGREEMENT WITH CAMP HOWZE DEVELOPMENT PARTNERS, LLC. TO CREATE CAMP HOWZE INDUSTRIAL RAIL PARK LOCATED AT FM 1202, GAINESVILLE, TEXAS.

WHEREAS, the Board of Directors of the Gainesville Economic Development Corporation (GEDC), meeting in accordance with section 4B(n) of the Development Corporation Act of 1979, met on November 28, 2022; and

WHEREAS, the Board of Directors of the Gainesville Economic Development Corporation voted to approve a Performance Agreement with Camp Howze Development Partners, LLC. to create Camp Howze Industrial Rail Park.

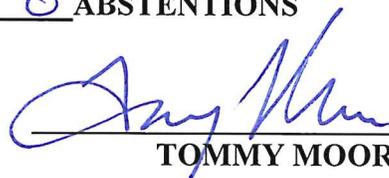
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS, MEETING IN REGULAR SESSION ON NOVEMBER 15, 2022 THAT:

Section 1.

That the City Council of the City of Gainesville hereby approves the actions of the GEDC, which voted to approve a Performance Agreement with Camp Howze Development Partners, LLC. to create Camp Howze Industrial Rail Park, hereto attached as Attachment "A".

PASSED AND APPROVED THIS 6th DAY OF DECEMBER 2022 BY THE FOLLOWING VOTES:

 7 AYES, 0 NAYS, 0 ABSENT, 0 ABSTENTIONS



TOMMY MOORE, MAYOR

ATTEST:



DIANA ALCALA, CITY SECRETARY



RESOLUTION NO. GEDC 11-28-2022

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, A TEXAS NON-PROFIT CORPORATION, APPROVING THE PERFORMANCE AGREEMENT WITH CAMP HOWZE DEVELOPMENT PARTNERS LLC TO CREATE CAMP HOWZE INDUSTRIAL RAIL PARK; AUTHORIZING THE PRESIDENT AND EXECUTIVE DIRECTOR TO EXECUTE SAID PERFORMANCE AGREEMENT AND ANY AND ALL RELATED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Gainesville Economic Development Corporation (hereinafter referred to as the "GEDC") is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities"; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . ."; and

WHEREAS, GEDC has approved a project with Camp Howze Development Partners, LLC, a Texas limited liability company (hereinafter referred to as "Camp Howze"), and the Performance Agreement which is attached hereto as *Exhibit A*; and

WHEREAS, the GEDC's Board of Directors have determined the economic development assistance to be provided to Camp Howze pursuant to this Agreement, attached hereto as *Exhibit A*, is consistent and meets the definition of "project" as that term is defined in Sections 501.101 and 501.103 of the Texas Local Government Code; and the definition of "cost" as that term is defined by Section 501.152 of the Texas Local Government Code.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, THAT:

Section 1. That the foregoing recitals are hereby found to be true and correct findings of the Gainesville Economic Development Corporation, and are fully incorporated into the body of this Resolution.

Section 2. That the Board of Directors of the GEDC finds and determines that the project and Performance Agreement, attached hereto as *Exhibit A*, will promote new and expanded business development, and is otherwise consistent with Sections 501.101 and 501.103 of the Texas Local Government Code.

Section 3. That the Board of Directors of the GEDC does hereby approve and authorize the President and/or Executive Director to execute the Performance Agreement, attached hereto as *Exhibit A*, and authorize the President to execute this Resolution.

Section 4. That this Resolution shall become effective from and after its passage.

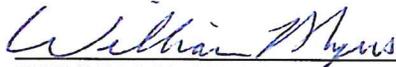
PASSED AND APPROVED THIS 28TH DAY OF NOVEMBER 2022, BY THE FOLLOWING VOTES:

4 AYES, 0 NAYS, 3 ABSENT, 0 ABSTENTIONS



RYAN MORRIS, PRESIDENT

ATTEST:



WILLIAM MYERS, EXECUTIVE DIRECTOR

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between the **GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “GEDC”), and **CAMP HOWZE DEVELOPMENT PARTNERS, LLC**, a Texas limited liability company (hereinafter referred to as “Developer”), is made and executed on the following recitals, terms and conditions.

WHEREAS, on or about August 23, 2021, the GEDC and Developer entered into a Commercial Property Contract of Sale concerning approximately 146.0609 acre tract or tracts of land situated in the S.W. Hillis Survey, Abstract No. 454, the J.D. Sharum Survey, Abstract No. 961, the Sarah Smith Survey, Abstract No. 913, and the J. Spears Survey, Abstract No. 915, City of Gainesville, Cooke County, Texas, and as generally described and/or depicted Tract 1 in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the “GEDC Property”); and

WHEREAS, on or about March 30, 2022 the Developer purchased an approximately 138.6674 acre tract or tracts of land situated in the W.W. Hillis Survey, Abstract Number 454, B.C. Forbes Survey, Abstract Number 1614, and the J.M. Williamson Survey, Abstract Number 1109, in the City of Gainesville, Cooke County, Texas as generally described and/or depicted as Tract 2 in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the “Developer Property”); and

WHEREAS, on or about August 2, 2022, the GEDC and Developer entered into a First Amendment to Commercial Property Contract of Sale concerning the sale of the GEDC Property; and

WHEREAS, on or about November 15, 2022, the GEDC and Developer entered into a Second Amendment to Commercial Property Contract of Sale concerning the sale of the GEDC Property; and

WHEREAS, the GEDC and Developer now desire to enter into an economic development incentive agreement referred to in state statute as a Performance Agreement and related economic development; and

WHEREAS, the GEDC is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage

and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities”; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

WHEREAS, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless GEDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by GEDC’s investment; a schedule of capital investments to be made as consideration for any direct incentives provided by GEDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, Developer has applied to GEDC for financial assistance necessary to rail improvements and infrastructure improvements to be constructed and located on the Property; and

WHEREAS, the GEDC’s Board of Directors have determined the economic development assistance to be provided to Developer pursuant to this Agreement is consistent and meets the definition of “project” as that term is defined in Sections 501.101 and 501.103 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the City Council of the City of Gainesville, Texas, to approve all programs and expenditures of the GEDC, and accordingly this Agreement is not effective until City Council has approved this project at a City Council meeting called and held for that purpose.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the GEDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until eighty-four (84) months from the Effective Date, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any, authorized and consistent with Section 501.158 of the Act.
- (c) **Developer.** The word “Developer” means Camp Howze Development Partners, LLC, a Texas limited liability company, its successors and assigns, whose address for the purposes of this Agreement is 1700 Sansom Street, Suite 500, Philadelphia, PA 19103.
- (d) **Effective Date.** The words “Effective Date” mean the date of the letter to execute this Agreement by and between the Developer and the GEDC.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **Full-Time Equivalent Employment Position.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of Two Thousand Eighty (2,080) hours of work averaged over a twelve (12) month period and earning a minimum of \$20.00 per hour and which meet the definition of “primary job” as defined in Section 501.002(12) of the Act.
- (g) **GEDC.** The term “GEDC” means the Gainesville Economic Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 311 S. Weaver Street, Gainesville, Texas 76240.
- (h) **Property.** The word “Property” means an approximately 284.7283 acre combined “GEDC Property” and “Developer Property” situated in the City of Gainesville, Cooke County, Texas, and as generally described and/or depicted in Exhibit A of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those common-area expenditures consisting of the construction of the following:
 - (1) railroad infrastructure constructed for the benefit of tenants to be located on the Property;
 - (2) rail, natural gas, electric, water, sewer and roadway common-area infrastructure constructed for the benefit of tenants to be located on the Property;

(3) storm water common-area infrastructure constructed for the benefit of tenants to be located on the Property; and

(4) a non-proprietary rail-truck transfer facility to service the surrounding area;

and those expenditures which meet the definition of “project” as that term is defined in Sections 501.101 and 501.103 of the Act, and meet the definition of “cost” as that term is defined in Section 501.152 of the Act.

(j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

Developer covenants and agrees with GEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(a) **Qualified Expenditures.** Developer covenants and agrees to submit to the GEDC by the end of the Term of this Agreement paid invoices, paid receipts, or other paid documentation of the Qualified Expenditures made to the Property in the minimum amount of **Nine Million Six Hundred Thousand and No/100 Dollars (\$9,600,000.00)**, less and Primary Jobs Credits, and in a form acceptable to the GEDC.

(b) **Operate Industrial and Rail Facility.** Developer covenants and agrees to establish an industrial and rail facility, which shall be maintained and operated by an affiliated 3rd party, located on the Property by December **31, 2025**, and during the Term of this Agreement.

(c) **Reporting Qualified Expenditures and Primary Jobs.** Developer covenants and agrees beginning on **February 1, 2024**, and annually thereafter during the Term of this Agreement, Developer shall deliver to GEDC an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and Qualified Expenditures made to the Property (the “Annual Compliance Verification”). The Developer covenants and agrees beginning on **February 1, 2024**, and annually thereafter during the Term of this Agreement, there will be a total of **six (6)** Annual Compliance Verifications due and submitted to the GEDC covering the Qualified Expenditures and the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

(d) **Acquisition of the GEDC Property.** Developer covenants and agrees to acquire the GEDC Property from the GEDC within ninety (90) days of the Effective Date of this Agreement or consistent with the terms of a real estate sales contract executed by and between the Developer and GEDC. The purchase price for the GEDC Property shall be **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)**. At closing, the Developer shall pay to the GEDC cash in the amount of **Two Million Five Hundred**

Thousand and No/100 Dollars (\$2,500,000.00) and a balance of **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)**, which excludes **One Hundred Thousand and No/100 Dollars (\$100,000.00)** previously provided by Developer in option money to GEDC pursuant to a Commercial Property Contract of Sale, a First Amendment to Commercial Property Contract of Sale, and a Second Amendment to Commercial Property Contract of Sale by and between the parties. Developer covenants and agrees to execute a bank letter of credit in a form acceptable to the parties in the amount of said **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)**. In addition, Developer covenants and agrees at the closing on the GEDC Property to execute a deed of trust lien or other lien for the GEDC Property in a form acceptable to the parties.

- (e) **Performance Conditions.** Developer agrees to make, execute and deliver to GEDC such other instruments, documents and other agreements as GEDC or its attorneys may reasonably request to evidence this Agreement.
- (f) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and GEDC.

SECTION 5. AFFIRMATIVE COVENANTS OF GEDC.

GEDC covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Conveyance of the GEDC Property.** GEDC covenants and agrees to convey good and indefeasible fee simple title to the GEDC Property, free and clear of any liens or other encumbrances, by special warranty deed to the Developer within ninety (90) days of the Effective Date of this Agreement or consistent with the terms of a real estate sales contract executed by and between the Developer and GEDC. The purchase price shall be **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)**.
- (b) **Economic Development Assistance.**
 - (1) **Qualified Expenditures Credit.** GEDC covenants and agrees to provide Developer a twenty-five percent (25%) credit towards the bank letter of credit executed by Developer pursuant to Section 4(d) of this Agreement for the paid invoices, paid receipts, or other paid documentation provided by Developer to GEDC consistent with Section 4(a) of this Agreement (hereinafter referred to as the "Qualified Expenditure Credit").
 - (2) **Primary Jobs Credit.** In addition, GEDC covenants and agrees to provide Developer a **Four Thousand and No/100 Dollars (\$4,000.00)** credit towards the bank letter of credit executed by Developer pursuant to Section 4(d) of this Agreement for each Full-Time Equivalent Employment Position reported to GEDC in the Annual Compliance Verification consistent with Section 4(c) of this Agreement (hereinafter referred to as the "Primary Job Credit").

- (3) The aggregate of the Qualified Expenditure Credit and the Primary Job Credit provided by GEDC to Developer pursuant to this Agreement shall not exceed the **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)** amount for said bank letter of credit provided by the Developer.
- (A) For example purposes, Developer must provide to GEDC Qualified Expenditure Credit and the Primary Job Credit in a minimum amount of **Nine Million Six Hundred Thousand and No/100 Dollars (\$9,600,000.00)** by the end of the Term of this Agreement in order to forgive and extinguish the **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)** bank letter of credit provided by Developer to GEDC for the acquisition of the GEDC Property.
- (4) **Application for Qualified Expenditure Credit and Primary Job Credit.** Developer shall provide to GEDC a request for the Qualified Expenditure Credit and Primary Job Credit to be applied towards the bank letter of credit executed by Developer pursuant to Section 4(d) of this Agreement not more often than once a year or in increments of Five Hundred Thousand and No/100 Dollars (\$500,000.00), whichever is sooner.
- (c) **Performance.** GEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and GEDC.

SECTION 6. CESSATION OF ADVANCES.

If the GEDC has made any commitment to provide any financial assistance to Developer, whether under this Agreement or under any other agreement, the GEDC shall have no obligation to advance or disburse the financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or GEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or GEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and GEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to GEDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City of Gainesville, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from GEDC and/or Cooke County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate or maintain a cause of action for damages caused by the event(s) of default. In the event Developer defaults between the Effective Date, during the Term of this Agreement, and Developer is unable or unwilling to cure said default within the prescribed time period, or at the end of this Agreement, Developer shall immediately repay to the GEDC the following: **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)**, less the Qualified Expenditure Credit and the Primary Job Credit provided by Developer to GEDC consistent with Section 5(b) of this Agreement.

SECTION 9. INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this

feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (j) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date the GEDC notifies Developer of the violation.

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DEVELOPER:

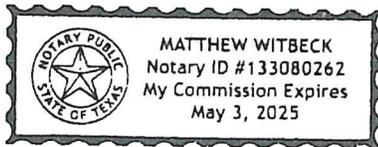
**CAMP HOWZE DEVELOPMENT
PARTNERS, LLC,**
A Texas limited liability company,

By: 
Name: P. Craig Hughes
Title: President
Date Signed: 12/08/2022

STATE OF Texas
COUNTY OF Collin

§
§
§

This instrument was acknowledged before me on the 8 day of December, 2022,
by P. Craig Hughes, President of the Camp Howze Development
Partners, LLC, a Texas limited liability company, on behalf of said Texas company.



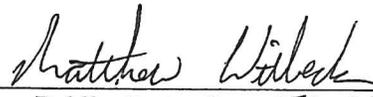

Notary Public, State of Texas

Exhibit A

Legal Description and/or Depiction of the Property including GEDC Property and Developer Property

RESOLUTION NO. 02-07-2023A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS APPROVING THE ACTIONS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, WHICH VOTED TO APPROVE THE FIRST AMENDMENT TO THE PERFORMANCE AGREEMENT WITH CAMP HOWZE DEVELOPMENT PARTNERS, LLC TO CREATE CAMP HOWZE INDUSTRIAL RAIL PARK.

WHEREAS, the Board of Directors of the Gainesville Economic Development Corporation (GEDC), meeting in accordance with section 4B(n) of the Development Corporation Act of 1979, met on January 23, 2023; and

WHEREAS, the Board of Directors of the Gainesville Economic Development Corporation voted to approve the first amendment to the performance agreement with Camp Howze Development Partners, LLC to create Camp Howze Industrial Park.

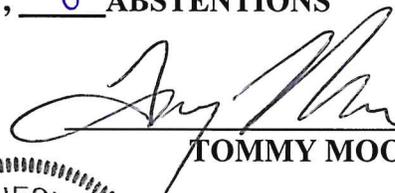
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS, MEETING IN REGULAR SESSION ON FEBRUARY 7, 2023 THAT:

Section 1.

That the City Council of the City of Gainesville hereby approves the actions of the GEDC, which voted to approve the first amendment to the performance agreement with Camp Howze Development Partners, LLC to create Camp Howze Industrial Park, hereto attached as Attachment "A".

PASSED AND APPROVED THIS 7th DAY OF FEBRUARY, 2023 BY THE FOLLOWING VOTES:

 7 AYES, 0 NAYS, 0 ABSENT, 0 ABSTENTIONS



TOMMY MOORE, MAYOR

ATTEST:



DIANA ALCALA, CITY SECRETARY



RESOLUTION NO. GEDC 01-23-2023-B

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, A TEXAS NON-PROFIT CORPORATION, APPROVING THE FIRST AMENDMENT TO THE PERFORMANCE AGREEMENT WITH CAMP HOWZE DEVELOPMENT PARTNERS LLC TO CREATE CAMP HOWZE INDUSTRIAL RAIL PARK; AUTHORIZING THE PRESIDENT AND EXECUTIVE DIRECTOR TO EXECUTE SAID PERFORMANCE AGREEMENT AND ANY AND ALL RELATED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Gainesville Economic Development Corporation (hereinafter referred to as the “GEDC”) is a Type B economic development corporation, created pursuant to Chapter 505 of the Texas Local Government Code, as amended; and

WHEREAS, Section 501.101 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are: (1) for the creation or retention of primary jobs; and (2) found by the board of directors to be required or suitable for the development, retention, or expansion of: (A) manufacturing and industrial facilities; (B) research and development facilities; (C) military facilities, including closed or realigned military bases; . . . (F) recycling facilities; . . . (I) distribution centers; (J) small warehouse facilities capable of serving as decentralized storage and distribution centers; (K) primary job training facilities for use by institutions of higher education; or (L) regional or national corporate headquarters facilities”; and

WHEREAS, Section 501.103 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

WHEREAS, GEDC has approved a project with Camp Howze Development Partners, LLC, a Texas limited liability company (hereinafter referred to as “Camp Howze”), and the Performance Agreement which is attached hereto as *Exhibit A*; and

WHEREAS, the GEDC’s Board of Directors have determined the economic development assistance to be provided to Camp Howze pursuant to this Agreement, attached hereto as *Exhibit A*, is consistent and meets the definition of “project” as that term is defined in Sections 501.101 and 501.103 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, THAT:

Section 1. That the foregoing recitals are hereby found to be true and correct findings of the Gainesville Economic Development Corporation, and are fully incorporated into the body of this Resolution.

Section 2. That the Board of Directors of the GEDC finds and determines that the project and First Amendment to the Performance Agreement, attached hereto as *Exhibit A*, will promote new and expanded business development, and is otherwise consistent with Sections 501.101 and 501.103 of the Texas Local Government Code.

Section 3. That the Board of Directors of the GEDC does hereby approve and authorize the President and/or Executive Director to execute the First Amendment to the Performance Agreement, attached hereto as *Exhibit A*, and authorize the President to execute this Resolution.

Section 4. That this Resolution shall become effective from and after its passage.

PASSED AND APPROVED THIS 23RD DAY OF JANUARY 2023, BY THE FOLLOWING VOTES:

4 AYES, 0 NAYS, 3 ABSENT, 0 ABSTENTIONS



RYAN MORRIS, PRESIDENT

ATTEST:



WILLIAM MYERS, EXECUTIVE DIRECTOR

Exhibit A

FIRST AMENDMENT TO PERFORMANCE AGREEMENT

THIS FIRST AMENDMENT TO PERFORMANCE AGREEMENT (“**Amendment**”) is made and entered into to be effective as of February ___, 2023, CAMP HOWZE DEVELOPMENT PARTNERS, LLC, a Texas limited liability company (“**Developer**”), and GAINESVILLE ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation (“**GEDC**”).

RECITALS:

A. GEDC and Developer entered into that certain Performance Agreement dated effective December 12, 2022, a copy of which is attached hereto as Exhibit A (the “**Agreement**”), with respect to the entitlement and development of that certain industrial and rail facility park located in the City of Gainesville, Texas, as more particularly described in the Agreement (the “**Property**”).

B. GEDC and Developer have agreed to amend the Agreement on the terms set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, and the respective covenants, agreements, and obligations set forth in this Amendment, Developer and GEDC hereby agree as follows:

1. **Capitalized Terms.** All capitalized terms not specifically defined in this Amendment will have the meanings provided in the Agreement.

2. **Term.** The following language is added to the of Section 2 of the Agreement to read as follows:

“Notwithstanding the foregoing, the Term of this Agreement shall be extended, on a day-for-day basis, by the total number of days of Force Majeure. “Force Majeure” shall mean (a) fire, windstorm or other casualties beyond the control of the Developer, (b) strikes, lockouts or other labor disputes or actions which are not the fault of or specific to Developer, (c) government action or inaction with respect to the Industrial Rail Park (defined below), including delays in issuing any required permits, notices to proceed or making inspections, emergency declarations connected with a pandemic or similar disaster circumstance, that (i) directly interrupts, delays or prohibits the development or construction of the Industrial Rail Park, and (ii) is enacted following the commencement of construction of the Industrial Rail Park, (d) adverse weather conditions of unusual duration, (e) changes in applicable state or local ordinances, rules or regulations after the commencement of construction of the Industrial Rail Park, (f) delayed delivery of materials, volatile commodity prices or shortages in materials generally affecting the market, and (g) similar unanticipated events or circumstances beyond the control of Developer.”

3. Section 4(a) of the Agreement is hereby deleted in its entirety and replaced with the following:

“**Qualified Expenditures.** Developer covenants and agrees to submit to the GEDC by the end of the Term of this Agreement paid invoices, paid receipts, or other paid documentation of the Qualified Expenditures made to the Property in the minimum amount of **Nine Million Six Hundred Thousand and No/100 Dollars (\$9,600,000.00)**, less the total amount of the Primary Jobs Credits, and in a form acceptable to the GEDC.”

4. **Operate Industrial and Rail Facility.** Section 4(b) of the Agreement is hereby deleted in its entirety and replaced with the following:

“(b) Developer covenants and agrees to commence construction of an industrial and rail facility located on the Property (“Industrial Rail Park”), which, upon completion of construction, shall be maintained and operated by Developer or an affiliate of Developer, by **December 31, 2025**, and during the Term of this Agreement, subject to Force Majeure. Notwithstanding the foregoing, Developer shall have until the end of the Term of this Agreement to complete construction of the Industrial Rail Park and otherwise comply with the terms and conditions of this Agreement.”

5. **Acquisition of the GEDC Property.** Section 4(d) of the Agreement is hereby deleted in its entirety and replaced with the following.

“(d) **Acquisition of the GEDC Property.** Developer covenants and agrees to acquire the GEDC Property from the GEDC within one hundred eighty (180) days of the Effective Date of this Agreement or consistent with the terms of the Commercial Property Contract of Sale dated effective as of August 31, 2022, as amended, executed by and between the Developer and GEDC (the “Commercial Property Contract of Sale”). The purchase price for the GEDC Property under the Commercial Property Contract of Sale shall be **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)**, which represents the original Purchase Price of **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)** less the sum of **One Hundred Thousand and No/100 Dollars (\$100,000.00)** Option Payments previously deposited by Developer with the Title Company and subsequently released to GEDC. At Closing (as defined in the Commercial Property Contract of Sale), the Developer shall pay to GEDC the Purchase Price (as defined in the Commercial Property Contract of Sale) as follows: (i) Developer shall deliver cash in the amount of **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)** to the Title Company at Closing, and (ii) a letter of credit in favor of GEDC from First State Bank in a form reasonably acceptable to the parties in the amount of **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00).**”

6. **Conveyance of the GEDC Property.** Section 5(a) of the Agreement is hereby modified as follows:

a. All references to “special warranty deed” are hereby replaced with “general warranty deed”.

b. The last sentence of Section 5(a) of the Agreement is hereby amended to read as follows:

“Subject to Section 4(d) of the Agreement, the purchase price shall be **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00).**”

7. **Affirmative Covenants of GEDC.**

a. Section 5(b)(3)(A) of the Agreement is hereby deleted in its entirety and replaced with the following:

“For example purposes, Developer must provide to GEDC Qualified Expenditure Credit and the Primary Job Credit in a minimum amount of **Nine Million Six Hundred Thousand and No/100 Dollars (\$9,600,000.00)** by the end of the Term of this Agreement in order for First State Bank to

release the **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)** in favor of GEDC.”

b. Section 5(b)(4) of the Agreement is hereby deleted in its entirety and replaced with the following:

“Application for Qualified Expenditure Credit and Primary Job Credit. Developer shall provide to GEDC a request for the Qualified Expenditure Credit and Primary Job Credit to be applied towards the bank letter of credit executed by Developer pursuant to Section 4(d) of this Agreement not more often than once a quarter or, except for the final request, in increments of not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00), whichever is sooner.”

8. **Effect of an Event of Default.** Section 8 of the Agreement is hereby deleted in its entirety and replaced with the following:

“In the Event of Default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any Default, and the defaulting party shall have thirty (30) days to cure said Default; provided that, as to non-monetary defaults which cannot be reasonably cured within such thirty (30) day period, the period of cure shall be extended to the extent reasonably necessary to achieve the cure so long as Developer (i) promptly commences to cure within the thirty (30) day period, (ii) at all times thereafter diligently pursues the cure to completion thereafter and (iii) in any event effects the cure within a sixty (60) day period following notice of the said, failure or breach. Should said Default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement by providing written notice to the non-defaulting party. On the effective date of such termination, this Agreement shall be of no further force or effect and the parties shall have no further rights or obligations hereunder, except for those obligations expressly set forth in this Agreement to survive termination hereof. In the event Developer defaults between the Effective Date, during the Term of this Agreement, and Developer is unable or unwilling to cure said default within the prescribed time period, First State Bank is hereby permitted to release the **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)** letter of credit, less the Qualified Expenditure Credit and the Primary Job Credit provided by Developer to GEDC consistent with Section 5(b) of this Agreement, to GEDC. In the event GEDC defaults between the Effective Date, during the Term of this Agreement, and GEDC is unable or unwilling to cure said default within the prescribed time period, First State Bank is hereby permitted to release the **Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00)** letter of credit to Developer.”

9. **Indemnification.** The following language is added to the end of Section 9 to read as follows:

“, EXCEPT TO THE EXTENT CAUSED BY SUCH PARTY’S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE PARTIES AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT, EACH MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.”

10. **Assignment.** Section 10(c) of the Agreement is hereby deleted in its entirety and replaced with the following:

“Assignment. Developer may assign its rights under this Agreement upon the following conditions: (a) the assignee of Developer must be an entity controlling, controlled by, or under common control with Developer, and (b) Developer must provide written notice of such assignment to GEDC within five (5) days of such assignment. Other than the foregoing, this Agreement may not be assigned without the express written consent of the other party.”

11. **Ratification; Counterparts.** Developer and GEDC hereby ratify and confirm the terms of the Agreement as modified by this Amendment. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. If there is any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall control. This Amendment may be executed in multiple counterparts which, when taken together, shall constitute one and the same document. This Amendment may be executed and delivered by facsimile or electronic mail transmission.

[Signatures Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the date first written above.

GEDC:

**GAINESVILLE ECONOMIC DEVELOPMENT
CORPORATION,**
a Texas non-profit corporation

By: Ryan Morris
Name: Ryan Morris
Title: President

DEVELOPER:

CAMP HOWZE DEVELOPMENT PARTNERS, LLC,
a Texas limited liability company

By: Craig Hughes
Name: Craig Hughes
Title: President

EXHIBIT A
PERFORMANCE AGREEMENT

[attached]