

EASEMENT AGREEMENT FOR ACCESS, PARKING AND LANDSCAPING

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

Date: \_\_\_\_\_, 2009

Grantor: City of Livingston, Texas, a municipal corporation

Grantor's Mailing Address: 200 West Church Street, Livingston, Polk County, Texas 77351

Grantee: County of Polk, State of Texas

Grantee's Mailing Address: Polk County Courthouse, Livingston, Polk County, Texas 77351

Dominant Estate Property: Block Seventeen (17) of the Town of Livingston, Polk County, Texas, according to the map or plat thereof recorded in Volume B, Page 215 of the Deed Records of Polk County, Texas, to which map or plat and its recording reference is hereby made for all intents and purposes, together with all buildings situated thereon and any fixtures to such buildings, and portions thereof.

Easement Property: Being in the M. L. Choate Survey, A-15, Polk County, Texas and being within the City of Livingston as shown on a Plat recorded in Volume D-B, Page 215 of the Polk County Deed Records. Said easement being across portions of Washington Avenue, Jackson Avenue, Mill Street, and Abbey Street. Said easement being more particularly described in the attached **Exhibit "A"** and as shown on the site plan attached as **Exhibit "B"**.

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to and egress from the Dominant Estate Property, to and from Jackson Avenue, Mill Street, Washington Avenue, and Abbey Street in the City of Livingston, Polk County, Texas, and for providing parking areas and areas for landscaping as generally shown on the site plan attached as **Exhibit "C"**.

Consideration: Good and valuable consideration, (including the public purpose and benefit to be derived by the City of Livingston, Texas by reason of the expansion of the Polk County Courthouse and related offices through construction of the Polk County Judicial Center), the receipt and sufficiency of which are hereby acknowledged by Grantor.

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**Exceptions to Conveyance:** Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; and all presently recorded and validly existing instruments, other than conveyances of the surface fee estate that affect the Easement Property.

**Grant of Easement:** Grantor, to the extent it is legally able to do so, for the Consideration and subject to the Exceptions to Conveyance, grants, sells, and conveys to Grantee and Grantee's successors and assigns an easement over, on, and across the Easement Property for the Easement Purpose and for the benefit of the Dominant Estate Property, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's successors and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded. Further, Grantor's conveyance does not affect the rights or responsibilities of any other party that may have an interest in the Easement Property.

**Terms and Conditions:** The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to and runs with all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors and assigns who at any time own the Dominant Estate Property or any interest in the Dominant Estate Property (as applicable, the "Holder").

2. *Duration of Easement.* The duration of the Easement is perpetual.

3. *Reservation of Rights.* Grantor reserves for Grantor and Grantor's successors and assigns the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by Holder for the Easement Purposes. Notwithstanding the foregoing, Grantor also reserves the right to use the Easement Property, including the area below the surface of the Easement Property, for purposes of maintaining any utilities required to be maintained by Grantor and which are located on, under or adjacent to the Easement Property. Further notwithstanding the foregoing, if Grantor's maintenance of utilities damages the Easement Property, Grantor will have no obligation to restore the Easement Property. In the event the Easement Property is damaged by Grantor during maintenance activities, the cost to repair the damage will be borne solely by Holder.

4. *Secondary Easement.* Provided Holder first obtains the written consent of Grantor, which consent will not be unreasonably withheld, conditioned or delayed, Holder will have the right (the "Secondary Easement") to use the agreed amount of the property that is adjacent to the Easement Property ("Adjacent Property") required to install and maintain the improvements

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necessary to accomplish the Easement Purpose within the Easement Property. However, Holder must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder must maintain the Easement Property in a neat and clean condition. With the written consent of Grantor, which will not be unreasonably withheld, conditioned, or delayed, Holder has the right to construct, install, maintain, replace, and remove parking spaces, sidewalks, landscape areas (and related irrigation), utilities and related facilities under or across any portion of the Easement Property (collectively, the "Improvements"). All matters concerning the configuration, construction, installation, maintenance, replacement, and removal of the Improvements must be approved in writing by Grantor, provided Grantor may not unreasonably withhold, condition or delay such approval.

6. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

7. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

8. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

9. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

10. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

11. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth

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in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Indemnity.* Grantor and Grantee each agree to be responsible for their own negligent acts, errors or omissions in the performance of this agreement, without waiving any governmental immunity available to either Grantor or Grantee under Texas law and without waiving any defenses of either party under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The successors and assigns of Grantor and Grantee shall indemnify, defend, and hold harmless each other, the Grantor and Grantee from any loss, attorney's fees, expenses or claims attributable to breach or default of any provision of this agreement by the indemnifying party. As additional assurance to Grantor, Grantee, its successors and assigns, will maintain property and/or liability insurance policies in amounts and with carriers reasonably acceptable to Grantor, its successors and assigns, and Grantee, its successors and assigns will provide evidence of such insurance coverage upon Grantor's, or its successors or assigns, reasonable request.

14. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

15. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

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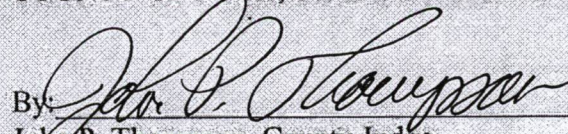
17. *Recitals.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

18. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

CITY OF LIVINGSTON, TEXAS, a municipal corporation

By: \_\_\_\_\_  
Clarke Evans, Mayor

COUNTY OF POLK, STATE OF TEXAS

By:  \_\_\_\_\_  
John P. Thompson, County Judge

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STATE OF TEXAS

COUNTY OF POLK

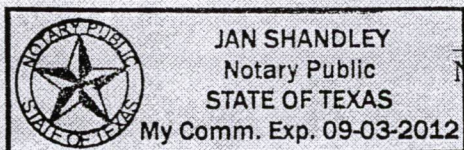
The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2009 by Clarke Evans, Mayor of the City of Livingston, Texas, a municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF POLK

The foregoing instrument was acknowledged before me on the 23<sup>rd</sup> day of June, 2009 by John P. Thompson, County Judge of the County of Polk, State of Texas.



Jan Shandley  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Jeff S. Chance, Attorney at Law PLLC  
517 South First Street  
Lufkin, Texas 75901

FIELDNOTES of an easement in the M.L. Choate Survey, A-15, Polk County, Texas and being within the City of Livingston as shown on a Plat recorded in Volume D-B, Page 215 of the Polk County Deed Records. Said easement being across portions of Washington Avenue, Jackson Avenue, Mill Street, and Abbey Street. Said easement being more particularly described as follows:

COMMENCING at the Northeast corner of Block 17 of said City at the intersection of the South right of way of Mill Street with the West right of way of Washington Avenue, found a 2" nickel disc for corner;

THENCE N18°08'57"E 31.57 feet to the Actual Place of Beginning of the herein described easement within the right of way of said Washington Avenue;

THENCE with a line parallel with and 9.83 feet perpendicular to the East Line of said Block 17, South 262.00 feet to a point for corner from which the Southeast corner of said Block 17 bears N28°38'34"W 20.51 feet;

THENCE with a line parallel with and 18.00 feet perpendicular to the South Line of said Block 17 and within the right of way of Abbey Street, N89°58'56"W 245.95 feet to a point for corner from which the Southwest corner of said Block 17 bears N50°43'17"E 28.42 feet;

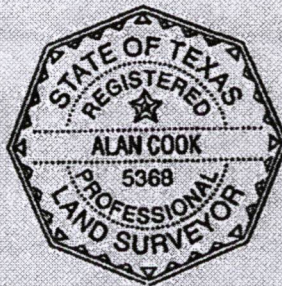
THENCE with a line parallel with and 22.00 feet perpendicular to the West Line of said Block 17 and with the right of way of Jackson Avenue, North 262.00 feet to a point for corner from which the Northwest corner of said Block 17 bears S36°14'51"E 37.21 feet;

THENCE with a line parallel with and 30.00 feet perpendicular to the North Line of said Block 17 and within the right of way of Mill Street, S89°58'56"E 245.95 feet to the Place of Beginning.

Surveyed : March 21, 2008



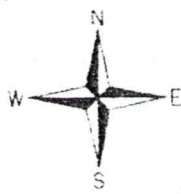
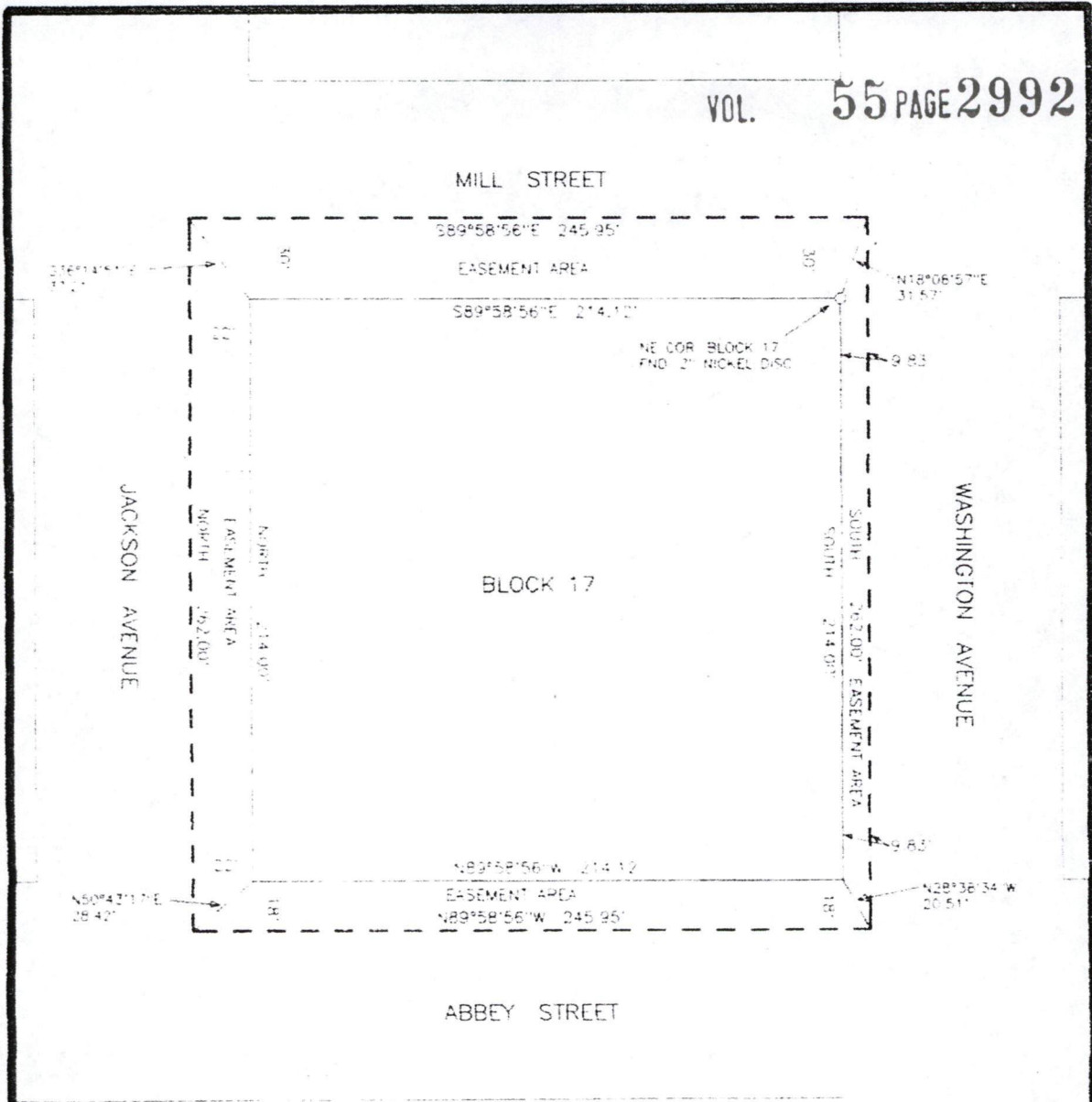
Alan Cook, Registered Professional  
Land Surveyor, No. 5368



EXHIBIT

A

tabbles



PLAT OF AN EASEMENT IN THE M.L. CHOATE SURVEY, A-15, POLK COUNTY, TEXAS AND BEING AROUND BLOCK 17 IN THE CITY OF LIVINGSTON, TEXAS AS SHOWN ON A PLAT RECORDED IN VOLUME D-B, PAGE 215 OF THE POLK COUNTY DEED RECORDS.

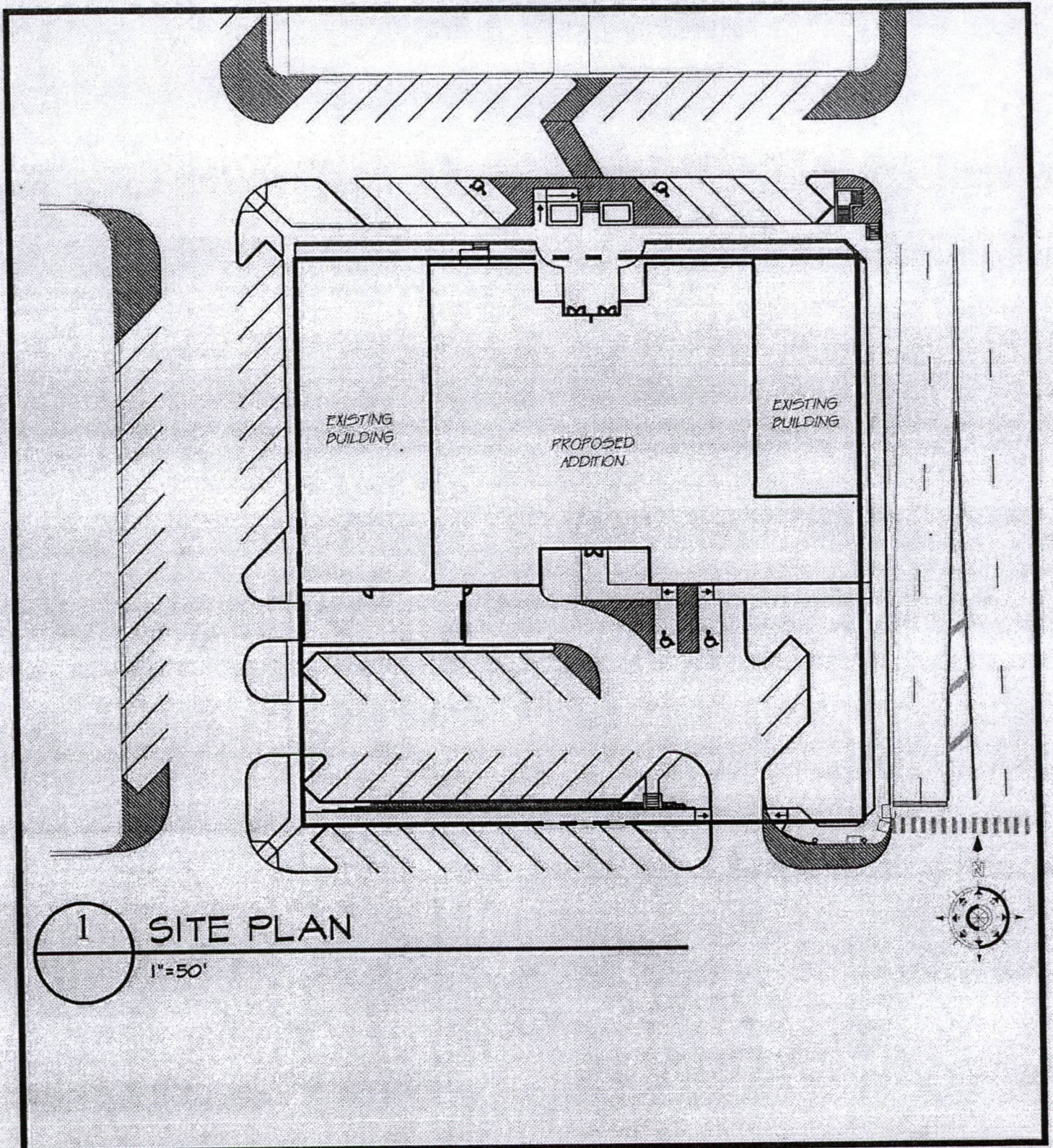
ALAN COOK, REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 5368, DO HEREBY CERTIFY THAT THIS PLAT REPRESENTS AN ACTUAL SURVEY MADE FROM THE GROUND OF THE PROPERTY SHOWN HEREON.

SUBSCRIBED AND SWORN TO before me on this 17th day of March, 2009.  
*Alan Cook*  
 ALAN COOK, REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 5368, 1110 EAST ABBEY STREET, LIVINGSTON, TX 77347, (832) 327-8164



**EXHIBIT B**

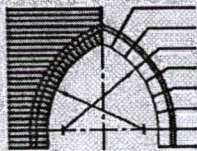




1 SITE PLAN  
1"=50'

**HESTERS and SANDERS ARCHITECTURE**

801 E. DENMAN, SUITE 1  
LUFKIN, TEXAS 75901  
PH: (936) 639-9330  
FAX: (936) 639-9334



**H S A**

EMAIL: hestersandsanders@consolidated.net

DATE:

4/13/2009

SCALE:

1"=50'

PROJECT NO.

70.001.06

PROJECT/LOCATION:  
**JUDICIAL CENTER  
POLK COUNTY**

SHEET TITLE:  
**SITE PLAN**

EXHIBIT  
C