

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT**  
**BETWEEN THE CITY OF BURLESON AND Grumps HAMBURGERS**

This Economic Development Agreement (the "Agreement") is entered into as of September 20, 2010 (the "Effective Date") by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas ("City"), by and through its City Manager, and Grumps Hamburgers ("Grumps"), a Texas limited partnership, by and through its Chief Executive Officer Collier Albright.

**WITNESSETH:**

**WHEREAS**, on May 27, 1993, the City adopted Resolution No. 583 establishing an Economic Development Program (the "Program") pursuant to Section 380.001 of the Local Government Code (Section 380.001): and

**WHEREAS**, Grumps desires to participate in the Program by entering into this Agreement; and

**WHEREAS**, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that Grumps' performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

**WHEREAS**, the City is authorized by Article 52-a Texas Constitution, and TEX. LOC. GOV'T CODE §380.001 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, Grumps has purchased or will purchase certain land in the City of Burleson, Johnson County, Texas located at 108 S. Main Street in Old Town, and Grumps proposes to operate a Grumps Hamburgers and further develop the Property in phases on the Property; and

**WHEREAS**, the City has found the Development will contribute to an increase in economic development in the City; and

**WHEREAS**, the Property is not owned or leased by any member of the Burleson City Council or any member of the City Planning and Zoning Commission.

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1.**  
**AUTHORIZATION**

The City Council finds and determines that this Agreement is authorized and governed by Section 380.001 and by the Program.

**ARTICLE 2.**  
**DEFINITIONS**

- 2.01 The terms "Agreement," "Effective Date," "City," "Grumps," and "Program," shall have the meanings provided, above.
- 2.02 "Capital Investment" means and shall include all costs incurred relating to the improvement of the Property, including the purchase price of the building and actual construction costs of all buildings, structures, infrastructure, utilities, landscaping and other onsite and offsite improvements, including all labor and materials.
- 2.03 "Development" means the development of the Property in phases as follows:
- (A) "Phase 1" means a fifty (50) seat restaurant in the downstairs area of the Property, the construction of a new commercial kitchen on the Property, two (2) ADA bathrooms, and an upgraded HVAC system for the downstairs.
  - (B) "Phase 2" means renovation of the front half of the upstairs of the Property to add fifty (50) more restaurant seats, the construction of a patio over the City right-of-way, and the upgrade of the upstairs HVAC.
  - (C) "Phase 3" means the renovation of the back half of the upstairs area on the Property to create a reception hall, and further upgrade the HVAC for the back half of the upstairs area.
- 2.04 "Grant Payment(s)" means the payments of established in Section 5 of this Agreement.
- 2.05 "Opening Date" means that date on which Grumps open the Restaurant.
- 2.06 "Property" means 108 S. Main Street, Burleson, Texas, and the building currently at that location.
- 2.07 "Restaurant" means a Grumps Hamburgers or a restaurant of similar or better quality as the Grumps Hamburgers currently located in Granbury, Texas on US 377 and in Stephenville, Texas on US 67.

**ARTICLE 3.**  
**TERM**

- 3.01 The term of this Agreement shall commence on the Effective Date and will terminate five (5) years after the date Opening Date for the Restaurant.

**ARTICLE 4.**  
**COVENANTS OF Grumps**

- 4.01 Covenants Regarding Grumps Development and Operations. In consideration of City agreeing to pay Grumps the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Grumps agrees to the following, which are not obligations of Grumps, but are duties that must be fulfilled in order to receive Grant Payments in each phase:
- (A) Design, construct and operate the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws, subject to the approval of the Burleson Old Town Design Standards Board.
  - (B) Make a Capital Investment in an amount equal to at Six Hundred and Fifteen Thousand Dollars (\$615, 000.00) for Phase 1.
  - (C) Grumps shall be solely responsible for the design and construction of the Development and shall comply with all building codes and other ordinances of the City applicable to the Development.
  - (D) After the Opening Date, Grumps shall operate the Restaurant for the term of this Agreement subject to (i) Force Majeure, (ii) casualty and condemnation, and (iii) temporary closings for repair, renovations and/or alterations not to exceed thirty (30) days.
  - (E) Grumps shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency.
- 4.02. Phased Construction. All Construction and renovation shall be subject to the approval of the Burleson Old Town Design Standards Board.
- (A) Phase 1. By March 2011, Grumps shall renovate and obtain a certificate of occupancy for the downstairs portion of the Property to create a fifty (50) seat Restaurant to include a new commercial kitchen, two (2) ADA bathrooms and upgraded HVAC with a Capital Investment in the Property of no less than Six Hundred and Fifteen Thousand Dollars (\$615, 000.00) for Phase 1.

- (B) Phase 2. By December 31, 2012, Grumps shall obtain a certificate of occupancy for Phase 2, which shall include an additional fifty (50) seats in the front portion of the upstairs, a patio over the City right-of-way and upgraded HVAC with a Capital Investment of no less than Eighty Thousand Dollars (\$80,000.00) for Phase 2.
- (C) Phase 3. By December 31, 2013, Grumps shall renovate and obtain a certificate of occupancy for a reception hall in the back upstairs area of the Property and upgraded HVAC for that area with a Capital Investment of no less than One Hundred Thousand Dollars (\$100,000.00) for Phase 3.

**ARTICLE 5.**  
**PROGRAM GRANT**

- 5.01 In accordance with the provisions of this Agreement, the City agrees that, subject to the terms and conditions contained herein, Grumps shall be entitled to receive Grant Payments and benefits according to the following schedule.
- 5.02 In consideration of completing Phase 1 according to the requirements set forth in Section 4.02(A), the City agrees to waive all permit fees associated with the construction of Phase 1, including plan review fees, water and sewer tap fees and commercial remodel inspection fees. In addition, the City hereby approves the construction of a second story porch on the front of the building in the City right-of-way, subject to City engineering review and approval, and approval of the design by the Old Town Design Standards Board.
- 5.03 In consideration of completing Phase 2 according to the requirements set forth in Section 4.02(B), the City will pay to Grumps a one time cash grant of Six Thousand Dollars (\$6,000.00) within thirty (30) days of the issuance of a certificate of occupancy for Phase 2.
- 5.04 Conditioned on completing Phase 2, in consideration of completing Phase 3, according to the requirements set forth in Section 4.02(C), the City will pay to Grumps a one time cash grant of Six Thousand Dollars (\$6,000.00) within thirty (30) days of the issuance of a certificate of occupancy for Phase 3.

**ARTICLE 6.**  
**AUTHORITY; COMPLIANCE WITH LAW**

- 6.01 Grumps hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Grumps and this Agreement constitutes the legal, valid and binding obligation of Grumps, and is enforceable in accordance with its terms and provisions.

- 6.02 Notwithstanding any other provision of this Agreement, Grumps shall comply with all federal, state, and local laws.
- 6.03 During the term of this Agreement, Grumps agrees not to knowingly employ any undocumented workers at the Restaurant, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Grumps shall repay the amount of the Grant Payments received by Grumps as of the date of such violation within 120 business days after the date Grumps is notified by the City of such violation, plus interest at the rate Burleson is paying on the most recent issuance of bonded indebtedness prior to Grumps' violation of this section.

**ARTICLE 7.**  
**DEFAULT AND REMEDIES**

7.01 Default by Grumps.

- (A) In the event: (i) Grumps fails to fulfill its obligations under Section 4.02 of this Agreement; (ii) Grumps has delinquent ad valorem or sales taxes owed to the City provided that Grumps retains the right to timely and properly protest and/or contest any such taxes; or (iii) Grumps materially breaches any of the material terms and conditions of this Agreement, then Grumps after the expiration of the notice and cure periods described herein, shall be in default of this Agreement. In the event of such a default, City shall give Grumps written notice of such breach and/or default, and if Grumps has not cured such breach or default within 90 days after receipt of such notice, the City may terminate this Agreement by written notice to Grumps, and the City shall have no further obligation to Grumps.
- (B) In the event Grumps fails to comply with Section 4.01(D) and closes or ceases operation prior to the end of the Term of this Agreement, Grumps shall repay to the City all monies paid to Grumps by the City under Sections 5.03 and 5.04 within thirty (30) days.
- 7.02 No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City Council of Burleson.

**ARTICLE 8.**  
**RIGHT OF OFFSET**

Grumps agrees that, subject to the provision of Notice by City and 60-day period following receipt of Notice in which Grumps may respond or act, City may offset the amount of Grant Payments installment due to Grumps for any calendar year under this

Agreement against any amount which is: (i) lawfully due to City from Grumps, and (ii) not subject to challenge by Grumps in a court of competent jurisdiction by Grumps.

**ARTICLE 9.**  
**VENUE AND GOVERNING LAW**

This Agreement is performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Burleson, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas.

**ARTICLE 10.**  
**FORCE MAJEURE**

Performance of Grumps' obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Grumps' obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

**ARTICLE 11.**  
**GIFT TO PUBLIC SERVANT OR TO Grumps REPRESENTATIVE**

11.01 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

11.02 Right of Reimbursement. Notwithstanding any other legal remedies, City may obtain reimbursement for any expenditure made to Grumps as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

**ARTICLE 12.**  
**ASSIGNMENT**

Grumps may not assign any part of this Agreement without consent or approval by the City Council.

**ARTICLE 13.**  
**INDEMNIFICATION**

- 13.01 **GRUMPS EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF GRUMPS OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS CONTRACT.** Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Grumps and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.
- 13.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City (including its past, present and future officers, elected officials, directors, employees and agents of the City) does not assume any responsibility to any third party in connection with Grumps' construction of the Development.

**ARTICLE 14.**  
**MISCELLANEOUS MATTERS**

- 14.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 14.02 Agreement Subject to Law. This Agreement is made subject in accordance with the Burleson Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws.
- 14.03 Interpretation. Each of the Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of

any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.

- 14.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 14.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 14.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.
- 14.07 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

**Grumps:** Grumps Hamburgers  
701 N. Houston Street  
Granbury, Texas 76048  
Attn: Collier Albright, Chief Executive Officer

**City:** City Manager  
City of Burleson, Texas  
141 West Renfro  
Burleson, Texas 76028

**With a copy to:** Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107



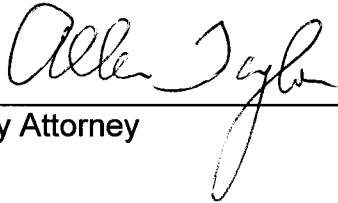
14.08 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

14.09 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, 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, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

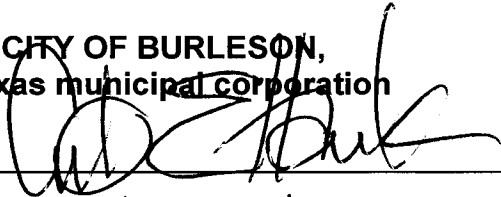
*[Signature pages to follow]*

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
City Attorney

THE CITY OF BURLESON,  
a Texas municipal corporation

By:   
\_\_\_\_\_

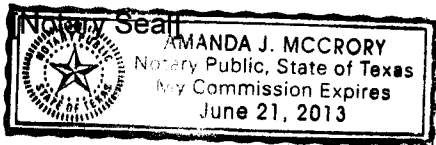
Name: Curtis E. Hawk

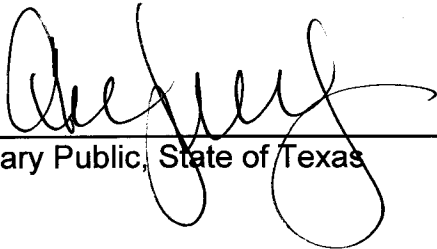
Title: City Manager

Date: September 20, 2010

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on September 20, 2010 by Curtis Hawk, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.



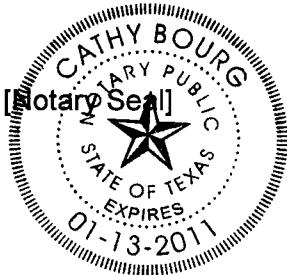
  
\_\_\_\_\_  
Notary Public, State of Texas

**Grumps Hamburgers  
a Texas limited partnership**

By: TC  
Name: Collier Albright  
Title: Chief Executive Officer  
Date: 9/23/10

STATE OF TEXAS  
COUNTY OF Jordan

This instrument was acknowledged before me on September 23<sup>rd</sup> 2010 by Collier Albright, known personally by me to be the Chief Executive Officer of Grumps Hamburgers, on behalf of said company.



Cathy Bourg  
Notary Public, State of Texas

