

**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE  
AGREEMENT FOR PUBLIC AND PRIVATE IMPROVEMENTS IN TAX INCREMENT  
FINANCING REINVESTMENT ZONE NUMBER TWO BETWEEN THE CITY OF  
BURLESON, THE BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION,  
THE TAX INCREMENT FINANCING REINVESTMENT ZONE NUMBER TWO AND  
BTX OLD TOWN, LLC**

This Chapter 380 Economic Development and Performance Agreement (the "Agreement") is entered into as of 12/14/20 (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, the Board of Directors of Tax Increment Financing Reinvestment Zone Number Two, ("District") acting by and through its Board President, and the Burleson 4A Economic Development Corporation ("BEDC") acting by and through its Board President, and BTX Old Town, LLC, ("BTX") a Texas limited liability corporation, by and through its authorized managers.

**WITNESSETH:**

**WHEREAS**, on May 27, 1993, the City adopted Resolution No. 583 establishing an Economic Development Program (the "Program") pursuant to Chapter 380 of the Texas Local Government Code; and

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

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

**WHEREAS**, the City is authorized by Article 52-a Texas Constitution, and Section 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, in accordance with the provisions of the Tax Increment Financing Act, Texas Tax Code, Chapter 311 ("Chapter 311"), on December 15, 2005, the Burleson City Council approved Ordinance No. C-592, creating, establishing and designating "Tax Increment Financing Reinvestment Zone Number Two, City of Burleson"; and

**WHEREAS**, Chapter 311 authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality consistent with the project plan of the

reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in the Act; and

**WHEREAS**, on September 22, 2005, after approval of the Board, the Burleson City Council approved the Tax Increment Reinvestment Zone Financing and Project Plan (herein so called), and the Financing Plan (herein so called); and

**WHEREAS**, the Build-Ready Improvements constructed within the District boundaries, as set forth in this Agreement, are consistent with encouraging development of the District in accordance with the purposes for its creation and are in compliance with the ordinance creating the District adopted by the City and all applicable laws; and

**WHEREAS**, the BEDC has determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.103, in that the expenditures are for infrastructure necessary to promote business development; and

**WHEREAS**, the City has established a regional landmark and economic center with the construction of a public space known as the Mayor Vera Calvin Plaza (the "Plaza"); and

**WHEREAS**, the City desires to encourage and incentivize high quality development around the Plaza with Old Town Burleson architecture (as defined in the City's Zoning Ordinance) and ties to existing walkability comprised of retail, restaurants and some commercial; and

**WHEREAS**, BTX seeks to develop mixed-use facilities on certain parcels near the Plaza in the Original Town of Burleson subdivision addressed as 135 West Ellison Street, 140 West Bufford Street and 114 West Ellison Street (the "Property"), currently owned by the City shown herein as **Exhibit A**; and

**WHEREAS**, on June 3, 2019, the Burleson City Council authorized City staff to issue a Request for Proposals for the redevelopment of the Property; and

**WHEREAS**, on January 6, 2020, the Burleson City Council reviewed the results of RFP 012-2019 and accepted proposals from affiliated entities of BTX and authorized City staff to begin negotiations for the redevelopment of 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; and



**WHEREAS**, the Burleson City Council finds and determines that BTX's performance of its obligations herein will revitalize Old Town Burleson and promote local economic development and stimulate business and commercial activity in the City.

**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 Burleson City Council finds and determines that this Agreement is authorized by Chapter 380 of the Texas Local Government Code, Chapter 2267 of the Texas Government Code, Chapters 501 and 504 of the Texas Local Government Code, and Chapter 311 of the Texas Tax Code.

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

- 2.01 The terms "Agreement," "Effective Date," "Property," "City," "BEDC," "District," "BTX," "Act," "Plaza," and "Program," shall have the meanings provided, above.
- 2.02 "Build-Ready Improvements" means certain onsite and offsite infrastructure and utility installation necessary to develop phases subsequent to Phase One as described on **Exhibit B**.
- 2.03 "Buildings 1, 2, 3, 4, 5, 6, and 7" mean those buildings to be located on 135 West Ellison and designated as such on **Exhibit B**.
- 2.04 "Buildings 3, 4, and 5 Remainder" means approximately 7,000 square feet of new construction in Buildings 3, 4, and 5 of Phase One to be retained by BTX for future tenants, in accordance with this Agreement.
- 2.05 "Capital Investment" means and shall include all costs incurred relating to the Development, whether incurred by BTX or another party, including the purchase price of the Property and actual construction costs including costs of all site preparation, buildings, structures, infrastructure, utilities, landscaping and other onsite and offsite improvements, including all labor and materials, tenant finish out costs, architect fees, and engineering fees but shall not include financing costs for the Capital Investments, insurance costs, marketing costs, or costs reimbursed to BTX by the City in the form of Incentives.
- 2.06 "City-Owned Offices" means approximately 12,000 square feet of new construction in Buildings 3, 4, and 5 of Phase One to be owned by the City for its use as office facilities. The City-Owned Offices will occupy the upper floors on Buildings 3, 4, and 5 and the lower floor of Building 4.

- 2.07 “Concept Plan” means the plan depicted on **Exhibit B**.
- 2.08 “Construction Contract” means the agreed terms in a design-build contract by which City-Owned Offices will be built by BTX and delivered to the City as mutually agreed upon by the parties.
- 2.09 “Development” means the construction of a mixed-use building(s) on the Property to contain restaurant, office and retail locations and the construction of the Parking Lot and related onsite and offsite public infrastructure to be constructed in phases in general conformance with the Concept Plan.
- 2.10 “Heim” means a sit down and take out restaurant substantially similar to Heim Barbecue located at 1109 W. Magnolia Avenue, Fort Worth, Texas.
- 2.11 “Incentives” mean the combined contributions, monetary or otherwise, of the District, the City and the BEDC towards completion of the Development, as required by this Agreement.
- 2.12 “Parking Lot” means the parking lot to be located at 140 W. Bufford Street.
- 2.13 “Phase One” means the construction of Buildings 3, 4, 5, 6, and 7 on **Exhibit B**, subject to Article 10.
- 2.14 “Public Parking Lot Connection” means the internal walkway, the public alley and 140 W. Bufford lot leading to the southeast corner lot at Bufford and Warren.
- 2.15 “Subsequent Phases” means Building 1, Building 2, and the building located at 114 West Ellison, subject to Article 10.
- 2.16 “Substantially Complete” with regard to any building, means the building is ready for finish out and eligible for a certificate of occupancy, and with regard to any Phase, when all buildings are Substantially Complete.

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

The term of this Agreement shall commence on the Effective Date and will terminate ten years following the date of the first Certificate of Occupancy for Phase One.

### **ARTICLE 4.** **IN GENERAL**

- 4.01 The Development. It is the parties’ intent to cooperate in the creation of a high end mixed-use development comprised of desirable restaurants, retail and commercial to enhance and compliment the Plaza and the City’s Old Town District substantially in conformance with the Concept Plan set forth in **Exhibit B**. BTX will be primarily responsible to construct the Development in phases with City approval, and the



City will provide the Incentives set forth in this Agreement provided BTX is in compliance with its duties and obligations set forth herein.

4.02 City Participation. The City's obligations under this Agreement shall not exceed Six Million Five Hundred Thirty-Seven Thousand Dollars (\$6,537,000.00) for all obligations set forth herein, including all Incentives, construction obligations and values of properties conveyed to BTX, in excess of the price paid by BTX for the conveyance. City Participation includes funds contributed by the District and the BEDC. The District authorizes the expenditure of up to Three Million One Hundred Ninety-Six Thousand Five Hundred Dollars (\$3,196,500.00). The BEDC authorizes the expenditure of up to Two Million Forty-Five Thousand Seven Hundred and Sixty Dollars (\$2,045,760.00) The BEDC and the District authorize the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.

4.03 The following uses will not be permitted in the Development and BTX shall be obligated, during the Term of this Agreement, to ensure that any lease or transfer of title prohibits such uses to the extent permitted by law:

- (A) Cabinet and upholstery shop;
- (B) Convent or monastery;
- (C) Convenience store with automotive fuel sales;
- (D) Fire or police station;
- (E) Mortuary or funeral home;
- (F) Plumbing shop (no outside storage);
- (G) Railroad passenger terminal;
- (H) Religious institution;
- (I) Swimming pool, commercial; and
- (J) Taxidermy.

## **ARTICLE 5.** **COVENANTS OF BTX**

In consideration of City agreeing to make certain covenants to BTX in accordance with the terms, provisions and conditions of this Agreement, BTX agrees to the following, which are not obligations of BTX, but are duties that must be fulfilled in order to receive the Incentives.

5.01 In General.

- (A) BTX shall originate and submit to the City for consideration documents necessary to plat the Property, including but not limited to plats and the Concept Plan for all phases.
- (B) BTX shall prepare all Concept Plans and building design in general conformance with **Exhibit B**, subject to final approval by the City Council.

- (C) BTX shall complete construction of the Development prior to the end of the Term with an approximate Capital Investment of no less than Eleven Million Five Hundred Thousand Dollars (\$11,500,000) allocated as follows:
  - (i) Eight Million Nine Hundred Thousand Dollars (\$8,900,000.00) for the construction of Buildings 1, 2, 3, 4, 5, 6, and 7, located at 135 W. Ellison;
  - (ii) Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for the development of 114 W. Ellison; and
  - (iii) One Hundred Thousand Dollars (\$100,000.00) for the construction of the Parking Lot.

In this Section 5.01 with regard to dollar amounts, "approximate" shall mean within ten percent (10%) of the dollar amount identified.

#### 5.02 Phase One.

- (A) Construction of Phase One shall commence no later than eighteen (18) months after the Effective Date and be completed no later than eighteen (18) months after the issuance of the first building permit for Phase One.
- (B) Buildings 3, 4, and 5 shall be comprised of the City-Owned Offices and the Buildings 3, 4, and 5 Remainder for a total square footage of approximately 19,000 and a Capital Investment by BTX in an approximate amount no less than One Million Two Hundred Twenty Five Thousand Dollars (\$1,225,000.00).
- (C) Buildings 6 and 7 shall be comprised of Heim in Building 6 constructed in conformance with Subsection (K) below, and the lower floor of Building 7 to be marketed for acceptable retail or restaurant space, and shall contain a total of approximately 19,780 square feet (5,290 of which is the partially finished rooftop of Building 6), with a Capital Investment of no less than an approximate amount no less than Three Million Dollars (\$3,000,000.00).
- (D) In the construction of Phase One, BTX shall:
  - (i) Submit to the City for approval building construction plans for Phase One buildings within twelve (12) months of the Effective Date.
  - (ii) Cause the underground burial of existing overhead power lines at the Property no later than twenty-four (24) months from the Effective Date.
  - (iii) Establish within twelve (12) months of the Effective Date a property owners association for all buildings located or to be located at 135 West Ellison Street, and submit any bylaws to the City for approval.



- (E) BTX shall cause the removal of the existing building at 114 W. Ellison on the Property through any necessary abatement, demolition and site clean-up.
- (F) BTX shall design and construct the entire Public Parking Lot Connection and retain ownership and maintenance responsibility for the portions that exist on 135 W. Ellison and 140 W. Bufford. City will bear the cost and maintenance responsibility for the portions of the Public Parking Lot Connection that exist in the public rights-of-way.
- (G) The City-Owned Offices shall be delivered as turn-key ready, which includes HVAC, water, electric, sewer, elevator, flooring, walls, ceiling, hardware and fixtures, excluding FF&E and IT.
- (H) BTX shall make a good faith effort to market the Buildings 3, 4, and 5 Remainder and the first floor of Building 7 to attract retail or restaurant tenants for a period of twelve (12) months from the date the building shell is completed and ready for tenant improvements ("Restriction Period"). After expiration of the Restriction Period, office uses are allowed, but will not be eligible for tenant incentives.
- (I) BTX shall deed to the City fee simple title of approximately 12,000 square feet of City-Owned Offices upon substantial completion of the City's portion of Phase One.
- (J) BTX will own and operate the Parking Lot in a manner that does not unreasonably target violators of any parking rules or restrictions.
- (K) BTX shall convey Building 6 to Heim or a substantially related holding entity, for the same sum it paid to the City to purchase the Building 6 site, and provide the City with all conveyance documents within sixty (60) days of closing with Heim.

In this Section 5.02 with regard to dollar amounts, "approximate" shall mean within ten percent (10%) of the dollar amount identified.

### 5.03 Sale of City Property.

- (A) Phase One. Upon approval of the Construction Contract, the City shall by special warranty deed convey fee simple title of the property required for Phase One and the Parking Lot, and the conveyance will contain a duty and time frame for BTX to complete the Phase One Improvements and Parking Lot improvements, and contain a right for the City to repurchase if Improvements are not commenced within the time frame, or similar provision to ensure compliance.
- (B) Subsequent Phases. Following the commencement of Phase One construction, BTX is entitled to purchase, and City shall convey fee title

ownership of, the remainder of the property in phases, by special warranty deed, conditioned upon the following:

- (i) Submittal of a development plan and schedule that is both substantially similar to the Concept Plan shown herein as **Exhibit B** and in accordance with this Agreement.
- (ii) Reimburse the City for the pro-rata share of the Build-Ready Improvements for that correspond with each subsequent phase.
- (iii) Compliance with the obligations under this Agreement.
- (iv) Submittal of conveyance documents containing a duty and time frame for BTX to complete construction of approved Development components on the conveyed property with a right of revocation, deed restrictions, or right of City to repurchase to ensure compliance. No subsequent phase shall be burdened with a right of revocation, deed restrictions, or right of City to repurchase that is significantly different in terms than Phase One.

5.04 City Manager Authorization. The City Council authorizes the City Manager or its designee to sign the associated documents required to complete the transactions with BTX for the Property subject to the requirements of this Agreement.

5.05 Subsequent Phases.

- (A) The buildings comprising Subsequent Phases do not need to be constructed simultaneously. Construction of the first Subsequent Phase after Phase One of the Development must commence within eighteen (18) months after the last available Certificate of Occupancy is issued on Phase One, but in no event later than twenty-four (24) months after Phase One is Substantially Complete. The next Subsequent Phase of the Development must begin within one (1) year after last available Certificate of Occupancy has been issued in the previous phase. A cumulative grace period of thirty-six (36) months will be allowed and exercised at the discretion of BTX between phases. BTX will make a good faith effort to promote and lease all available space. In any event, construction of all Phases must be completed no later than the expiration of this Agreement.
- (B) BTX shall submit to the City its intent to design, develop and construct additional phases of the Development by submitting in writing to the City Manager, at a minimum, the following: (i) the buildings to be constructed, as labeled by the concept plan, (ii) the anticipated timeline for acquisition and construction, (iii) the anticipated tenants, if applicable, when it can be legally disclosed, and (iv) a formal request to initiate transfer of real property.



- (C) If the City approves the submittal, City shall provide a written reply to BTX which shall include the following: (i) authorization to proceed with development applications on its behalf, (ii) authorization to commence any negotiations for utilization of the real property including the acceptance of letters-of-intent or the establishment of real estate contracts, and (iii) the anticipated timeline of City approvals for any actions that may be required for the next phase of Development. The City shall approve the submittal if BTX is in compliance with this Agreement. If BTX is not in compliance with this Agreement, the City shall give BTX notice detailing the non-compliance.

5.06 Capital Investment Requirement. The parties to this Agreement recognize that the square footages contained in the Concept Plan have not been fully engineered for specific utility and/or service requirements of the sites and/or users. As such, square footages are likely to change from the Concept Plan to the final architectural plans for each building. Accordingly, BTX's minimum Capital Investment requirements contained in this Agreement will be adjusted proportionately based on the actual square footage of the final architectural plans for each building when compared to the response to RFP 2019-012: 135 West Ellison (Bransom/Aiken) and the response to RFP 2019-012: 114 West Ellison (Aiken/Wimberly), both of which are attached as part of the Concept Plan.

## **ARTICLE 6. COVENANTS OF CITY**

- 6.01 Subject to BTX complying with its duties and obligations under this Agreement, the City agrees to the following for all phases of the Development:
- (A) Work with BTX to secure preliminary platting, final platting and the Concept Plan for all phases of the Development.
  - (B) Reimburse BTX for the actual cost of the Build-Ready Improvements, not to exceed One Hundred Thousand Dollars (\$100,000.00) upon substantial completion and submission of proof of construction costs acceptable to the City.
  - (C) Participation in the construction cost of Buildings 3, 4, and 5 in accordance with the Construction Contract.
  - (D) Reimburse BTX for the cost to bury power lines at the Property not to exceed Three Hundred Thousand Dollars (\$300,000.00) upon submittal of proof of the Capital Investment reasonably satisfactory to the City.
  - (E) Contribute up to Sixty Thousand Dollars (\$60,000.00) for the construction of the Public Parking Lot Connection.

- (F) Cause an environmental study known as a Phase 1 to be conducted for the Property at City's own expense and share the report with BTX. Should environmental remediation be required, the parties may negotiate allocation of the cost or seek termination of the Agreement by the remedies provided herein.
- (G) Upon request by BTX, reimburse BTX for the actual cost of removal of the existing building at 114 W. Ellison on the Property including costs of abatement, demolition and site clean-up at a not-to-exceed price of \$100,000, upon proof of costs reasonably satisfactory to the City.
- (H) Waive building permit fees associated with the Development for all occupants which will include water tap, inspection, and any other associated costs, excluding impact fees for water and sewer. The Development is recognized as exempt from roadway impact fees.
- (I) Review and approve pedestrian improvements for the Public Parking Lot Connection.
- (J) Program the Plaza with activities that bring traffic and events to the Property, particularly during off-peak times.
- (K) Conduct and deliver a parking study to evaluate long-term needs and affirm the City's commitment to adding new spaces to support growing demand.
- (L) Demolish the structure located at 225 West Renfro Street and pave for parking within twelve months of the issuance of a certificate of occupancy for City-Owned Offices.
- (M) Recognize and abide by the covenants of the property owners association established for all buildings on the Property, as reasonably approved by the City.
- (N) Make available tenant incentives according to the recommended packages for restaurant or retail tenants for the Development as mutually agreed upon by the parties.
- (O) Except as specifically set forth herein, the City does not waive any permit requirement or compliance with City ordinances.

6.02 Subject to BTX complying with its duties and obligations under this Agreement, the City agrees to the following for Buildings 3, 4 and 5 of Phase One:

- (A) Authorize City Manager to approve and sign the Construction Contract to cause the design and construction of the City-Owned Offices. BTX will concurrently design and construct the Buildings 3, 4, and 5 Remainder.



- (B) Work with BTX to design and plan Buildings 3, 4, and 5 constructed contiguous to each other in the center of 135 W. Ellison at an approximate total of 19,000 square feet to be comprised of City-Owned Offices at approximately 12,000 square feet and BTX to own the Buildings 3, 4, and 5 Remainder.

**ARTICLE 7.**

**REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS**

The parties hereto find that the area described herein constitutes an area of architectural importance and significance and the City Council of the City of Burleson, Texas, hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Government Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to Section 3000.002(d) of the Code, BTX voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "Regulations") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, BTX voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: 1) the City will not issue any permits for the Property in violation of this Article; 2) the covenants contained within this Article constitute a material term of this Agreement; 3) BTX's voluntary consent to the application of the Regulations to the Property, as described in this Article, constitutes a material inducement for the City to authorize the Incentives described herein; 4) the covenants contained herein shall run with the land and shall bind BTX and all successors and assigns; and 5) this Article shall survive termination or expiration of this Agreement.

**ARTICLE 8.**

**AUTHORITY; COMPLIANCE WITH LAW**

8.01 BTX 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 BTX and this Agreement constitutes the legal, valid and binding obligation of BTX, and is enforceable in accordance with its terms and provisions.

- 8.02 Notwithstanding any other provision of this Agreement, BTX shall comply with all federal, state, and local laws.
- 8.03 During the term of this Agreement, BTX agrees not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), BTX shall repay the amount of the Incentives received by BTX as of the date of such violation within 120 business days after the date BTX 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 BTX's violation of this Article.

**ARTICLE 9.**  
**DEFAULT AND REMEDIES**

9.01 Default by BTX or City.

- (A) In the event: (i) BTX fails to fulfill its obligations under Article 5 of this Agreement; (ii) BTX has delinquent ad valorem or sales taxes owed to the City provided that BTX retains the right to timely and properly protest and/or contest any such taxes; or (iii) BTX materially breaches any of the material terms and conditions of this Agreement, then BTX 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 BTX written notice of such breach and/or default, and if BTX 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 BTX, and the City shall have no further obligation to BTX.
- (B) In the event (i) City identifies environmental challenges per the study conducted under Article 6.01(D), and (ii) City and BTX cannot reach an agreement on mitigation within a reasonable time, then BTX shall give City a written notice of its desire to terminate the Agreement, and if City does not establish a mutually-agreeable mitigation plan within 90 days after receipt of such notice, BTX or the City may terminate this Agreement by written notice to the other party and neither party shall have any further obligations under the Agreement.
- (C) In the event (i) City has transferred deed for a portion of the Property to BTX, and (ii) BTX is found to be in breach of this Agreement, and (iii) all remedies have been exhausted, then City shall give a written notice of its desire to terminate the Agreement and to seek the following damages. BTX must within 90 days (i) deed back to the City any portion of the Property where construction has not occurred, other than civil construction of Build-Ready Improvements, and/or (ii) deed back to City any portion of the Property where construction has occurred with a detailed costing of work that has occurred, which the City shall provide compensation to BTX for



said work. Following the transfer of the deeds, the City may terminate this Agreement by written notice to BTX and neither party shall have any further obligations under the Agreement. This Section 9.01(C) only applies to the current defaulting phase and phases to the then defaulting phase subsequent, but not phases that are Substantially Complete.

9.02 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 10  
BTX UNABLE TO REACH AGREEMENT WITH HEIM**

In the event BTX is unable to enter into an agreement with Heim for the occupancy of Building 6, the provisions of this Article shall apply, and this Agreement shall be modified as follows:

- (A) BTX shall construct only Buildings 3, 4, and 5 as Phase One and Buildings 6 and 7 will be constructed in Subsequent Phases.
- (B) This Agreement shall be read in its entirety as if the definitions set forth in Article 2 are amended to read as follows:
  - 2.12 – Phase One – shall mean Buildings 3, 4, and 5.
  - 2.16 - Subsequent Phases. Shall mean Buildings 1, 2, 6, 7, and the building at 114 W. Ellison St.
- (C) BTX shall not convey Building 6 to Heim as set forth in Section 5.02(K).

**ARTICLE 11.  
RIGHT OF OFFSET**

BTX agrees that, subject to the provision of Notice by City and 90-day period following receipt of Notice in which BTX may respond or act, City may offset the amount of any compensation due to BTX for any calendar year under this Agreement against any amount which is: (i) lawfully due to City from BTX, and (ii) not subject to challenge by BTX in a court of competent jurisdiction by BTX.

**ARTICLE 12.  
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 13.**  
**FORCE MAJEURE**

Performance of BTX's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and BTX's 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 14.**  
**GIFT TO PUBLIC SERVANT OR TO BTX REPRESENTATIVE**

14.01 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.

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

**ARTICLE 15.**  
**ASSIGNMENT**

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

**ARTICLE 16.**  
**INDEMNIFICATION**

16.01 BTX 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 BTX 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 BTX and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

16.02 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 BTX's construction of the Development.

**ARTICLE 17.**  
**MISCELLANEOUS MATTERS**

17.01 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.

17.02 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.

17.03 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.

17.04 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.

17.05 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.

- 17.06 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.
- 17.07 No Waiver. Nothing contained in this Agreement shall be construed as the granting of any permit or permission required by any City ordinance or regulation, or the waiver of any requirement of any City ordinance or regulation.
- 17.08 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.

**BTX:** BTX Old Town, LLC  
124 S. Main, Ste. 207  
Burleson, Texas 76028

With a copy to: Email:maiken@arlawandtitle.com

With a copy to: Email: justin@radev.biz

**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

**BEDC:** Burleson EDC President  
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

**District:** Board Chair  
TIF Reinvestment Zone Number Two  
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

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

17.10 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.

CITY OF BURLESON

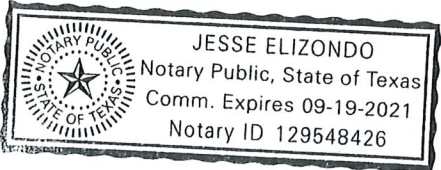
By: Robert Ranc  
~~Bryan Langley, City Manager~~ Robert Ranc, Deputy City Manager  
Date: December 14, 2020

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on 12/14, 2020 by ~~Bryan Langley~~ <sup>Robert Ranc</sup> Deputy, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]

Jesse Elizondo  
Notary Public, State of Texas





TAX INCREMENT FINANCING  
REINVESTMENT ZONE NUMBER TWO,

By: [Signature]

Name: Dan McClendon  
Title: Board President

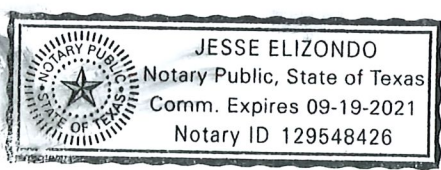
Date: December 18, 2020

STATE OF TEXAS  
COUNTY OF Tarrant/Johnson

This instrument was acknowledged before me on 12/14, 2020 by Dan McClendon, known personally by me to be the Board President of Tax Increment Financing Reinvestment Zone Number Two, on behalf of said entity.

[Notary Seal]

[Signature] / JESSE ELIZONDO  
Notary Public, State of Texas



**BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION**

By: 

Name: Dan McClendon  
Title: Board President

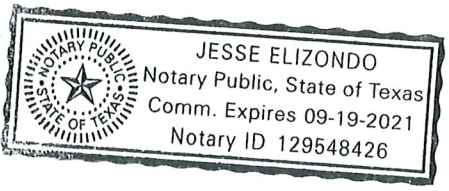
Date: December 08, 2020

STATE OF TEXAS  
COUNTY OF Tarrant/Johnson

This instrument was acknowledged before me on 12/8, 2020 by Dan McClendon, known personally by me to be the Board President of THE Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

  
Notary Public, State of Texas





**BTX OLD TOWN, LLC,  
a Texas limited liability company**

By: 

Name: Matthew G. Aiken

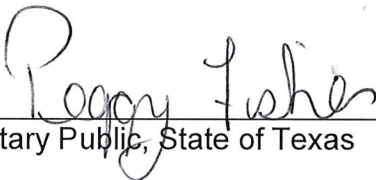
Title: Managing Member

Date: 12/15/20

STATE OF TEXAS  
COUNTY OF Tarrant

DL This instrument was acknowledged before me on Dec. 15, 2020 by DL, known personally by me to be the managing member of BTX Old Town, LLC, on behalf of said entity.

[Notary Seal]

  
Notary Public, State of Texas

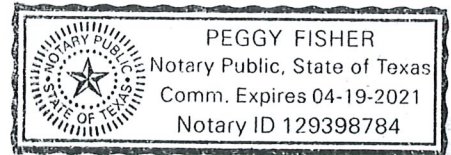


Exhibit "A"





Exhibit "B"



Exhibit "B"

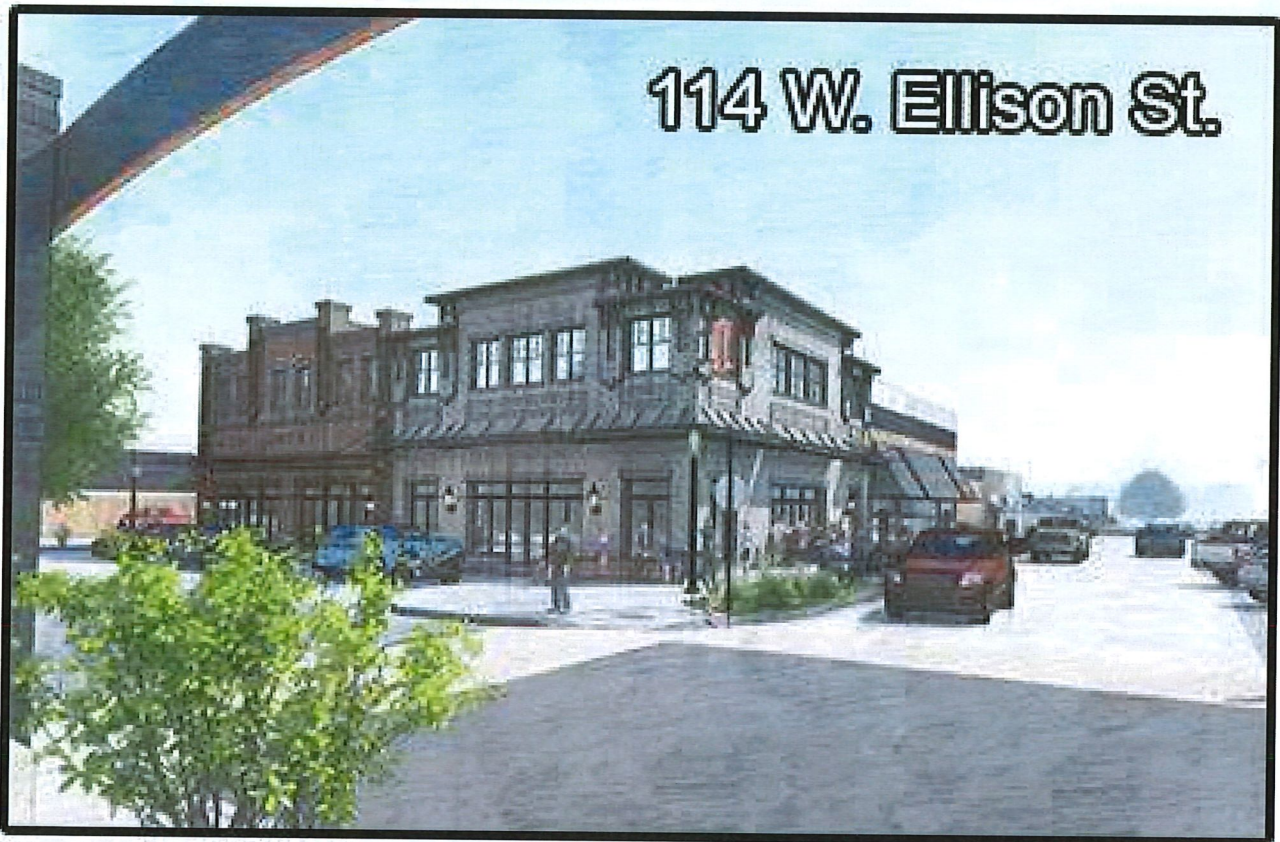


Exhibit "B" shall include the response to RFP 2019-012: 135 West Ellison (Bransom/Aiken) and in the response to RFP 2019-012: 114 West Ellison (Aiken/Wimberly), which are attached hereafter.