



Community Services Corporation
(Type B) Agenda

Monday, November 13, 2023
4:45 PM

City Hall - 141 W. Renfro
Burleson, TX 76028

1. **CALL TO ORDER**

2. **CITIZENS APPEARANCES**

Each person in attendance who desires to speak to the Board on an item NOT posted on the agenda, shall speak during this section. A speaker card must be filled out and turned in to the City Secretary prior to addressing the Board. Each speaker will be allowed three minutes to speak.

Each person in attendance who desires to speak on an item posted on the agenda shall speak when the item is called forward for consideration.

3. **GENERAL**

A. Consider approval of the minutes from the August 15, 2023 4B Corporation Board meeting.
(Staff contact: Amanda Campos, City Secretary)

B. Consider approval of resolution 4B111323ParksRecreation Capital, requesting the City Council pass an intention to reimburse resolution that includes an amount not to exceed \$2,833,601 related to the design, construction and improvements for Parks and Recreation capital projects. (Staff Presenter: John Butkus, Finance Director)

C. Consider approval of 4B11132023FarmLeaseBleeker a five-year farm lease with Charles Bleeker for approximately 11.74 acres located in the H.G. Catlett Survey Abstract No. 177 off S.W. Alsbury Boulevard. (Staff Contact: Justin Scharnhorst, Assistant to the City Manager)

D. Consider approval of 4B11132023Razzoo's1stamendment a Chapter 380 Economic Development and Performance Agreement (CSO#1754-05-2021) between the City of Burleson, Burleson Community Service Development Corporation, and Razzoo's, INC. (Staff Presenter: Alex Philips, Economic Development Director)

E. Consider approval of 4B11132023Heim1stamendment, an amendment of a Chapter 380 Economic Development and Performance Agreement (CSO#1653-01-2021) between the City of Burleson, Burleson Community Service Development Corporation, and Heim Burleson, LLC. (Staff Presenter: Alex Philips, Economic Development Director)

4. **BOARD REQUESTS FOR FUTURE AGENDA ITEMS OR REPORTS**

5. **RECESS INTO EXECUTIVE SESSION**

In accordance with Chapter 551 of the Texas Government Code, the Board may convene in Executive Session in the City Council Workroom in City Hall to conduct a closed meeting to discuss any item listed on this Agenda.

- A. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071, Texas Government Code**
- B. Discussion regarding possible purchase, exchange, lease, or value of real property pursuant to Section 551.072, Texas Government Code**
- C. Deliberation regarding commercial or financial information received from or the offer of a financial or other incentive made to a business prospect seeking to locate, stay or expand in or near the territory of the City and with which the City is conducting economic development negotiations pursuant to Section 551.087, Texas Government Code**

6. **ADJOURN**

CERTIFICATE

I hereby certify that the above agenda was posted on this the 8th of November 2023, by 5:00 p.m., on the official bulletin board at the Burleson City Hall, 141 W. Renfro, Burleson, Texas.



Amanda Campos

City Secretary

ACCESSIBILITY STATEMENT

The Burleson City Hall is wheelchair accessible. The entry ramp is located in the front of the building, accessible from Warren St. Accessible parking spaces are also available in the Warren St. parking lot. Sign interpretative services for meetings must be made 48 hours in advance of the meeting. Call the A.D.A. Coordinator at 817-426-9600, or TDD 1-800-735-2989.

Community Services Corporation (Type B)

DEPARTMENT: City Secretary's Office
FROM: Amanda Campos, City Secretary
MEETING: November 13, 2023

SUBJECT:

Consider approval of the minutes from the August 15, 2023 4B Corporation Board meeting.
(Staff contact: Amanda Campos, City Secretary)

SUMMARY:

The 4B Community Services Corporation did duly meeting on August 15, 2023.

OPTIONS:

- 1) Approve the minutes from the August 15, 2023 meeting as presented.
- 2) Approve the minutes from the August 15, 2023 meeting with amendments.

STAFF CONTACT:

Name: Amanda Campos
Title: City Secretary
acampos@burlesontx.com
817-426-9665

Burleson Community Service Development Corporation (4B)

August 15, 2023
DRAFT MINUTES

Item A.

Board Members Present:

Phil Anderson
Chris Fletcher

Dan McClendon, President
Alexa Boedeker

Board Members Absent:

Victoria Johnson

Staff Present:

Tommy Ludwig, City Manager
Amanda Campos, City Secretary
Monica Solko, Deputy City Secretary
Matt Ribitzki, Deputy City Attorney

1. CALL TO ORDER – Time: 3:00 p.m.

President Dan McClendon called the meeting to order. **Time: 3:03 P.M.**

2. CITIZEN APPEARANCE

- No speakers.

3. GENERAL

A. Minutes from the February 6, 2023 Community Services Corporation (Type B) Board meeting. (Staff Contact: Amanda Campos, City Secretary).

Motion was made by Alexa Boedeker and seconded by Phil Anderson to approve.

Motion passed 4-0. Victoria Johnson absent.

B. Consider approval of a resolution adopting the Burleson Community Service Development Corporation FY 2023-2024 annual budget. (Staff Presenter: Martin Avila, Finance Director)

Martin Avila, Finance Director, presented a resolution to the board.

Motion was made by Chris Fletcher and seconded by Phil Anderson to approve.

Motion passed 4-0. Victoria Johnson absent.

4. RECESS INTO EXECUTIVE SESSION

Pursuant to Section 551.071, Texas Government Code, the Board reserves the right to convene into Executive Session(s), from time to time as deemed

necessary during this meeting for any posted agenda item, to receive advice from its attorney as permitted by law.

A. Pending or Contemplated Litigation or to Seek the Advice of the City Attorney Pursuant to Section 551.071.

- No Executive Session needed.

5. ADJOURN

There being no further discussion President Dan McClendon adjourned the meeting. **Time: 3:13 p.m.**

Monica Solko
Deputy City Secretary

Community Services Corporation (Type B)

DEPARTMENT: Finance Department
FROM: John Butkus, Finance Director
MEETING: November 13, 2023

SUBJECT:

Consider approval of resolution 4B111323ParksRecreation Capital, requesting the City Council pass an intention to reimburse resolution that includes an amount not to exceed \$2,833,601 related to the design, construction and improvements for Parks and Recreation capital projects. (Staff Presenter: John Butkus, Finance Director)

SUMMARY:

On September 11, 2023, Council approved the final reading of the City's FY23-24 budget and capital improvement plan which included the five-year Parks and Recreation capital plan. On September 18, 2023, Council approved a revised five-year capital plan for Parks and Recreation. A balance of \$7,444,654 from the \$14,915,000 October 3, 2022 Council approved reimbursement resolution remains. The requested reimbursement resolution amount of \$2,833,601 will provide the additional authority required for the FY23-24 Parks and Recreation projects. This reimbursement resolution will give the City the ability to begin incurring capital expenditures with the intent to reimburse the cost incurred with proceeds from bond debt to be issued at a future date. The relevant section of the capital improvement plan is as follows:

4B PROJECTS		FY24	Reimbursement Resolution
Project #	Project Desc.	Budget	Requested Amount
TBD	BAILY LAKE DREDGING	105,000	-
TBD	CEDAR RIDGE	294,000	-
TBD	MEADCREST	420,000	-
TBD	OAK VALLEY NOTRTH RESTROOM	157,500	-
PK2302	CHILSOLM HALL FIELD TURF (4) FIELDS	2,231,250	2,231,250
TBD	OAK VALLEY SOUTH PARKING TRAILHEAD	567,000	-
PK2301	PARK MONUMENT SIGN YEAR 2	68,250	68,250
PK2304	BRICK ENTRY WAY	534,101	534,101
TBD	BRICK INDOOR POOL SAND FILTER	170,888	-
TBD	BRICK RE PLASTER INDOOR POOL	330,750	-
TBD	DESERT AIR SYSTEM	1,653,750	-
PK2303	HVAC REPLACEMENT	3,031,875	-
TBD	GOLF - T AND WAY FINDING SIGNAGE	26,250	-
TBD	RANGE SIDE 9 IMPROVEMENTS	47,250	-
TBD	FLOATING INTAKE PIPE REPLACEMENT	17,588	-
TBD	SYSTEM WIDE MASTER PLAN	105,000	-
Totals		\$ 9,760,451	\$ 2,833,601

OPTIONS:

- 1) Approve resolution
- 2) Approve resolution with changes
- 3) Deny resolution

RECOMMENDATION:

Staff recommendations approval of the resolution

PRIOR ACTION/INPUT (Council, Boards, Citizens):

October 3, 2022, City Council approved a minute order ratifying the Burleson Community Service Development Corporation Board's action requesting a reimbursement resolution that included an amount not to exceed \$14,915,000 for capital projects related to Parks and Recreation projects.

September 11, 2023, Council approved the final reading of the City's FY2023-24 annual budget with the five-year capital improvement plan.

September 18, 2023, Council approved a revised five-year capital improvement plan for Parks and Recreation.

FISCAL IMPACT:

N/A

STAFF CONTACT:

John Butkus
Finance Director
jbutkus@burlesontx.com
817-426-9627

4B Community Service Development Corporation Reimbursement Resolution

PRESENTED TO THE 4B BOARD OF DIRECTORS

NOVEMBER 13, 2023

Reimbursement Resolution

- Provides project funding prior to issuing the bonds
- City anticipates issuing bonds during August 2024
- The resolution is not an authorization to issue bonds

Use of the Resolution

- Council approved the FY23/24 Budget and capital improvement plan on September 11, 2023
- Council approved a revised five-year Parks and Recreation capital plan on September 18, 2023
- The approved budget included the City's capital improvement program for Parks and Recreation. A balance of \$7,444,654 from the \$14,915,000 October 3, 2022 Council approved reimbursement resolution remains
- The requested reimbursement resolution amount of \$2,833,601 will provide the additional authority required for the FY23/24 Parks and Recreation projects
- The capital cost will be reimbursed for project expenses incurred or obligated through August 31, 2024

4B Capital Improvement Plan

4B PROJECTS		FY24	Reimbursement Resolution	FY24	FY24	FY24				
Project #	Project Desc.	Budget	Requested Amount	Quarter	Land/Row	Quarter	Design/Eng	Quarter	Construction	Total
TBD	BAILY LAKE DREDGING	105,000	-							-
TBD	CEDAR RIDGE	294,000	-							-
TBD	MEADCREST	420,000	-							-
TBD	OAK VALLEY NOTRTH RESTROOM	157,500	-							-
PK2302	CHILSOLM HALL FIELD TURF (4) FIELDS	2,231,250	2,231,250					3	2,231,250	2,231,250
TBD	OAK VALLEY SOUTH PARKING TRAILHEAD	567,000	-							-
PK2301	PARK MONUMENT SIGN YEAR 2	68,250	68,250					2	68,250	68,250
PK2304	BRICK ENTRY WAY	534,101	534,101			2	18,693	4	515,408	534,101
TBD	BRICK INDOOR POOL SAND FILTER	170,888	-							-
TBD	BRICK RE PLASTER INDOOR POOL	330,750	-							-
TBD	DESERT AIR SYSTEM	1,653,750	-							-
PK2303	HVAC REPLACEMENT	3,031,875	-							-
TBD	GOLF - T AND WAY FINDING SIGNAGE	26,250	-							-
TBD	RANGE SIDE 9 IMPROVEMENTS	47,250	-							-
TBD	FLOATING INTAKE PIPE REPLACEMENT	17,588	-							-
TBD	SYSTEM WIDE MASTER PLAN	105,000	-							-
Totals		\$ 9,760,451	\$ 2,833,601		\$ -		\$ 18,693		\$ 2,814,908	\$ 2,833,601

Options

- Approve the resolution
- Approve the resolution with changes
- Deny the resolution

QUESTIONS/COMMENTS

Burleson Community Service Development Corporation
Resolution 4B111323ParksRecreationCapital

WHEREAS, the Burleson Community Service Development Corporation, known as the "Type B Corporation", incorporated and certified in June 1993 under the authorization of the Development Corporation Act of 1979; and

WHEREAS, the City Council of the City of Burleson, Texas (the "City") approved a parks and recreation capital improvement plan on September 11, 2023 (the "Parks CIP Plan"); and

WHEREAS, the City Council of the City of Burleson, Texas ("City") revised a parks and recreation capital improvement plan on September 18, 2023

WHEREAS, the Type B Corporation desires that the City obtain the ability to incur capital expenditure costs on projects that includes the City's parks and recreational facilities (including related drainage and utility relocation) with the intent to reimburse the costs incurred with proceeds from City bond debt to be issued at a future date in an amount not to exceed \$2,833,601.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE BURLESON COMMUNITY SERVICE DEVELOPMENT CORPORATION THAT:

Section 1

The Type B Corporation requests that the City Council pass a reimbursement resolution that includes \$2,833,601 of reimbursements for the construction, equipment, and improvement of City parks and recreational facilities (including related drainage and utility relocation).

Section 2

The Type B Corporation respectfully requests that the City Council ratify this resolution. Accordingly, this resolution shall take effect immediately after such ratification.

Section 3

The Secretary of the Type B Corporation is hereby directed to publish notice of this action following ratification by City Council as required by law.

Passed and approved and **SO RESOLVED** this__ day of_____, 2023.

Signed:

Attest:

 President of Type B Corporation

 Secretary of the Type B Corporation

Community Services Corporation (Type B)

DEPARTMENT: City Manager's Office

FROM: Justin Scharnhorst, Assistant to the City Manager

MEETING: November 13, 2023

SUBJECT:

Consider approval of 4B11132023FarmLeaseBleeker a five-year farm lease with Charles Bleeker for approximately 11.74 acres located in the H.G. Catlett Survey Abstract No. 177 off S.W. Alsbury Boulevard. (*Staff Contact: Justin Scharnhorst, Assistant to the City Manager*)

SUMMARY:

At the October 2nd meeting, City Council authorized a farm lease with Jody Land for the property located at 2140 & 2250 SW Alsbury. Given the City 4B Community Development Corporation purchased an additional tract of land that also is currently being farmed, it was appropriate to secure a formal lease. Those tracts of land that were recently purchased, if approved, will be under five year leases.

Mr. Bleeker will be expected to maintain the property in good working order. The lease term is five years and can be terminated with 180 days' written notice.

OPTIONS:

- 1) Example: Approve as presented
- 2) Example: Approve with changes
- 3) Example: Deny

RECOMMENDATION:

N/A

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

The cost of the lease is \$50.00 per year.

STAFF CONTACT:

Name: Justin Scharnhorst

Title: Assistant to the City Manager

jscharnhorst@burlesontx.com

817-426-9646



Farm Lease

November 13, 2023

Summary of Lease

- In the proposed farm agreement, the city would lease approximately 12 acres to Mr. Charles Bleeker. The 12 acres is near the intersection of Alsbury Blvd and Hulen St, and outlined below:



- Mr. Bleeker has maintained the property prior to the city acquiring the land.
- At the October 2nd meeting, Council authorized a lease for the property that is adjacent to the subject property.
- During that time it was discussed formalizing a lease on the property discussed tonight.

Summary of Lease Continued

- The annual rent due to the city under the lease is fifty dollars.
- City staff believes the lease benefits the city by reducing the mowing and maintenance costs associated with the property.
- The term of the lease is five years, but either party may cancel the lease at any time with 180 days' notice.
- Mr. Bleeker will use the property for cutting and bailing hay that will be used for livestock consumption.
- Mr. Bleeker may apply annual herbicide to the property to improve soil conditions, but must comply with all federal, state and local laws/ordinances.

Staff Recommendation

- Approve a farm lease with Mr. Charles Bleeker for the approximate 12-acre property located near the intersection of Alsbury Blvd and Hulen St.
- Deny a farm lease with Mr. Charles Bleeker.

FARM LEASE

THE STATE OF TEXAS §
COUNTY OF JOHNSON §

THIS FARM LEASE (the "Lease") is made and entered into by and between the City of Burleson, Texas, a home rule municipal corporation located in Johnson and Tarrant County, and Burleson Community Services Corporation, together hereinafter referred to as "Lessor", and Charles Bleeker, an individual, hereinafter referred to as "Lessee." In consideration of the rent and the covenants herein contained on the part of Lessee to be kept and performed, the Lessor does hereby lease, demise and let unto the Lessee, and the Lessee hires and rents the SURFACE ONLY, excluding the minerals, of approximately 11.74 acres, more or less, situated in Johnson County, Texas, as depicted in "A" (the "Premises"), subject to the following terms and conditions:

ARTICLE 1: TERM OF LEASE

The total term of this Lease shall be one day less than five (5) years, commencing on the 14th day of November, 2023 (the "Commencement Date") and terminating on the 30th day of September, 2024 (the "Termination Date"), unless sooner terminated in accordance with this Lease. The five (5) separate lease periods that make up the total term of this Lease are as follows:

First Lease Period:	November 14, 2023, to September 30, 2024
Second Lease Period:	October 1, 2024, to September 30, 2025
Third Lease Period:	October 1, 2025, to September 30, 2026
Fourth Lease Period:	October 1, 2026, to September 30, 2027
Fifth Lease Period:	October 1, 2027, to September 30, 2028

ARTICLE 2: RENT; PAYMENT OF RENT

Lessor agrees to lease the Premises to Lessee for and in consideration of Lessee's maintaining the property and Lessee's compliance with the provisions established in this Lease Agreement. In addition to the above consideration, Lessee agrees to pay Lessor \$50.00 in rent for each lease period. Lessee shall pay Lessor rent within thirty (30) days of October 1st each year. All rental payments must be made payable to City of Burleson and be hand delivered or mailed to the City of Burleson, Attn: Finance, 141 W Renfro St, Burleson, Texas 76028.

ARTICLE 3: TAXES

Lessee agrees to pay any taxes levied against the crops and personal property and fixtures of Lessee in and about the Premises and any ad valorem taxes assessed against the Premises. If any taxes of Lessee are levied against Lessor or Lessor's property and Lessor pays those taxes, Lessee, on demand, shall reimburse Lessor for all taxes actually paid on Lessee's behalf.

ARTICLE 4: SUBORDINATION

This Lease and all rights of Lessee under it are and shall be subject to and subordinate to the rights of any debt holder now or hereafter having a security interest in the Premises or any other encumbrances Lessor desires to place on the property.

ARTICLE 5: USE OF PREMISES

Lessee shall use the Premises solely for the purpose of planting, raising and harvesting crops, together with all other purposes and activities usually and customarily associated with a farming operation in Johnson County, Texas. Lessee agrees to not use the Premises for any purpose other than for planting, raising and harvesting crops or to alter the Premises, including clearing new roads, moving or erecting any fences, or locating on the Premises any type of permanent or temporary improvement without Lessor's prior written consent. Lessee further agrees to not hunt or fish the Premises or allow anyone else to do so. Lessee hereby acknowledges and understands that Lessor may lease property adjoining the Premises for agricultural or other purposes and that Lessee shall only have farming rights to the Premises and shall not have any rights to farm or use such adjoining acreage.

Notwithstanding the above, Lessee may plant wheat, Sudan, or Hybrid Grass, or farm native Bermuda grass. Other applications or crops outside of above must be approved by the City in writing on a case by case basis. Lessee shall keep the property mowed and cleaned up, and the land of bushes and trees in the open areas of the field. Lessee from time to time, at its discretion apply liquid or granular fertilizer and herbicide to improve the quality of the crop. Applications shall be consistent in variation to Super Nitro 28-0-0 for fertilizer and 2,4-D Amine 4 Herbicide. Other applications outside of the above must be approved by the City in writing prior to application. Lessee shall maintain communication with the adjacent landowner at 2410 SW Hulen Street, informing the homeowner tentative schedules for maintaining and improving the property.

ARTICLE 6: UTILITIES

Lessee shall pay or cause to be paid all charges for any water, electricity and any other utilities used on the Premises throughout the term of this Lease, including any costs of installation and connection fees.

ARTICLE 7: LESSEE'S COVENANTS

Lessee further covenants and agrees as follows:

- A. To pay and provide the Rent for this Lease, as it is set out herein; to use the Premises in a careful and proper manner for the use specifically described herein; to commit or permit no waste or damages to the Premises; to conduct or permit no business or act that is a nuisance or may be in violation of any federal, state, or local law or ordinance; only use the Premises in such a prudent manner so as to preserve and protect the land and soil; to surrender the Premises on expiration or termination of this Lease in at least as good of a condition as the Premises was in on the date prior to Lessee's occupation of the Premises; cultivate the Premises in a timely, thorough, and farmer-like manner, employing the best methods of farming customarily practiced on like crops in the area and keep, repair and maintain all existing fencing, if any, during the term of this Lease.
- B. Lessee assumes the risk of loss on all property and all improvements, including any crops, which are situated on the Premises. Lessee agrees to maintain at all times during this Lease, the insurance described herein below.
- C. Upon termination of this Lease, Lessee agrees that all improvements situated on the Premises, whether such improvements were situated on the Premises prior to this Lease or placed on the Premises during this Lease, shall become the property of Lessor, or, at the option of the Lessor, Lessee, at Lessee's sole expense, shall remove all improvements and debris and restore the surface of the Premises to its original condition provided that Lessee placed such improvements on the Premises during the term of this Lease.
- D. To permit Lessor to enter, inspect, and make such repairs to the Premises as Lessor may

reasonably desire or show the Premises to prospective purchasers and tenants, at all reasonable times.

- E. Lessee agrees that it is solely responsible for making all alterations, additions, or improvements necessary to the Premises to cause the Premises and its intended use to be in compliance with any laws, rules, ordinances, development codes or regulations of any applicable governmental authority, entity, or body, including, without limitation, the Federal Government, the City of Burleson, the County of Johnson, and the State of Texas and the rules and regulations of the United States Department of Agriculture and the Texas Agriculture Commissioner. The allocation of responsibility to Lessee for compliance with said laws, rules, ordinances, development codes or regulations is a material inducement for the parties to enter into this Lease. The costs incurred in causing the Premises and its intended use to be in compliance with said laws, rules, ordinances, development codes or regulations shall be solely borne by Lessee.
- F. Keep all gates on the Premises, if any, closed and locked, ingress to and egress from the Premises being at those places designated by Lessor and provide Lessor with all keys and/or combinations to each gate locking mechanism used by Lessee on the Premises.
- G. In the event this Lease is terminated early by Lessor, whether such termination is for cause or convenience, Lessee shall pay Lessor any and all rents and amounts, on a pro-rata basis, which were incurred and due prior to or as of the date this Lease is terminated. If Lessee has paid any portion of the annual rental amount in advance, Lessor shall return to Lessee, on a pro-rata basis, the proportion of rents that have been prepaid for any unused portion of a lease period.

ARTICLE 8: LESSOR'S COVENANTS

Lessor covenants and agrees to warrant and defend Lessee in the enjoyment and peaceful use and operation of the Premises during the term of this Lease, subject to the termination rights set forth herein.

ARTICLE 9: INDEMNIFICATION & INSURANCE

- A. **INDEMNIFICATION OF LESSOR: LESSOR SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM ANY USE OF THE PREMISES OR ANY NEARBY PREMISES USED BY LESSEE OR ANY PART THEREOF; OR CAUSED BY ANY DEFECT IN ANY BUILDING, STRUCTURE OR OTHER IMPROVEMENT THEREON; OR IN ANY EQUIPMENT OR OTHER FACILITY THEREIN; OR CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF LESSEE, OR OF ANY OF LESSEE'S AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, OR BY OR FROM ANY ACCIDENT ON THE LAND OR ANY SURROUNDING PREMISES OR ANY FIRE OR OTHER CASUALTY THEREON, OR OCCASIONED BY THE FAILURE OF LESSEE TO MAINTAIN THE PREMISES IN SAFE CONDITION, OR ARISING FROM ANY OTHER CAUSE WHATSOEVER; AND LESSEE HEREBY WAIVES ON ITS BEHALF ALL CLAIMS AND DEMANDS AGAINST LESSOR FOR ANY SUCH LOSS, DAMAGE, OR INJURY OF LESSEE OR OF LESSEE'S AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, AND HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD LESSOR ENTIRELY FREE AND HARMLESS FROM ALL LIABILITY FOR ANY SUCH LOSS, DAMAGE, OR INJURY OF OTHER PERSONS, AND FROM ALL COSTS AND EXPENSES ARISING THEREFROM. THE TERMS OF THIS INDEMNITY PROVISION SHALL SURVIVE ANY TERMINATION OF THIS LEASE.**
- B. Insurance: In order to insure the fulfillment of the above referenced indemnity provision,

Lessee hereby agrees to maintain, at all times during the Term of this Lease, at Lessee's sole cost, a comprehensive public liability insurance policy protecting Lessor against all claims or demands that may arise or be claimed on account of Lessee's use of the Premises, in an amount of at least \$1,000,000.00, per occurrence of accident and/or injury, for injuries to persons and damages to real and/or personal property. Said insurance shall be written by a company or companies acceptable to Lessor, authorized to engage in the business of general liability insurance in the state of Texas, and name Lessor as an additional insured. Furthermore, said insurance shall be primary as to any other existing, valid, and collectible insurance. Lessee shall deliver to Lessor annual certificates demonstrating that said insurance is paid up and copies of the insurance policies issued by the insurance companies. Lessee further agrees to maintain at all times during the Term of this Lease, at Lessee's cost, broad coverage fire and casualty insurance on its property and to provide Lessor with a copy of the policy and a certificate issued by the insurance company demonstrating that insurance is paid up. Lessee shall, within ten (10) calendar days from the execution of this Lease, obtain a certified statement by each insurance carrier containing a clause providing that the insurance carrier will give Lessor 30 days' written notice before any cancellation shall be effective. The insurance policies shall be provided by Lessee and shall be for a period of at least one year.

ARTICLE 10: DEFAULTS BY LESSEE

In addition to the remedies specifically set forth herein and those available at law or in equity, if Lessee fails to perform or breaches any term, condition or covenant set forth in this Lease, and this failure or breach continues for thirty (30) calendar days after a written notice specifying the required performance has been given to Lessee, Lessee shall be in default and Lessor may:

1. enforce specific performance causing Lessee to strictly comply with and perform such term, condition or covenant; or
2. may, but not be obligated to do so, enter the Premises and perform Lessee's obligations for the account of and at the expense of Lessee. Bills for all amounts paid by Lessor and all losses, costs, and expenses incurred by Lessor in connection with such performance by Lessor pursuant to this clause, including without limitation, all amounts paid and costs and expenses incurred by Lessor for any property, material, labor or services provided, furnished, or rendered or caused to be provided, furnished or rendered by Lessor to Lessee may be sent by Lessor to Lessee monthly or immediately, at Lessor's option, and shall be due and payable by Lessee to Lessor as additional rent within five (5) calendar days after same is sent to Lessee by Lessor; or
3. terminate this Lease, without liability, by written notice to Lessee, in which event, the Lease hereby created shall terminate on the thirty (30th) day after such notice is given (the "Termination Date") and Lessee shall within such thirty (30th) day period vacate the Premises and surrender them to Lessor in the state required under this Lease, with Lessor having the right to reenter and repossess the Premises discharged of this Lease and to expel all occupants and to remove all property therefrom.

Upon the occurrence of any default, Lessor may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Lessee or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

ARTICLE 11: DEFAULTS BY LESSOR

Defaults by Lessor are failing, within thirty (30) calendar days after receiving written notice from

Lessee, to comply with any term, condition or covenant set forth in this Lease. In the event that Lessor fails to cure its default within the said thirty (30) calendar days, Lessee may, as Lessee's sole remedy, terminate this Lease.

ARTICLE 12: VOLUNTARY TERMINATION

Lessor or Lessee may terminate this Lease, without cause or liability, upon giving one-hundred eighty (180) calendar days written notice to the other party. Upon the termination of this Lease, Lessee will surrender the Premises peaceably to the Lessor and pay Lessor all rental amounts and any other amounts that may be due hereunder as of the date of termination. In the event that Lessor exercises its right to terminate this Lease pursuant to this provision, Lessor shall be obligated to reimburse Lessee, on a pro-rata basis, the proportion of rents, if any, that have been prepaid for any unused portion of a lease period.

ARTICLE 13: INSOLVENCY, BANKRUPTCY, ETC., OF LESSEE

If Lessee is declared insolvent or adjudicated a bankrupt; if Lessee makes an assignment for the benefit of creditors; or if a receiver is appointed for Lessee, Lessor, without prejudice to its rights hereunder and at its option, may terminate this Lease and retake possession of the premises immediately and without notice to Lessee or any assignee, transferee, trustee, or any other person or persons, using force if necessary.

ARTICLE 14: LESSOR TO HAVE LIEN

Lessor will have a lien against all goods, equipment and other personal property of Lessee brought, stored, or kept on the Premises during the term of this Lease, in the aggregate amount of all rent, consideration, damages, and other sums that may at any time be owed by Lessee to Lessor under this Lease. In the event of any default by Lessee, Lessor may foreclose the lien in the same manner that a mortgage would be foreclosed.

ARTICLE 15: RIGHT TO SELL

It is understood and agreed that Lessor shall have the right to sell or assign its right, title and interest in the Premises, in whole or in part, at any time during the term of this Lease. If during the term of this Lease, the Premises are sold by Lessor to a third party, this Lease shall terminate. Not later than one hundred eighty (180) calendar days from the date in which Lessor gives Lessee notice that the Premises has been sold, Lessee shall vacate the Premises. Notwithstanding the above, Lessor may transfer its interest in the Premises between the two entities comprising the Lessor without triggering the termination specified in this Article.

ARTICLE 16: ELECTION BY LESSOR NOT EXCLUSIVE

The exercise by Lessor of any right or remedy to collect rent or enforce its rights under this Lease will not be a waiver or preclude the exercise of any other right or remedy afforded Lessor by this Lease or by statute or law. The failure of Lessor in one or more instances to insist on strict performance or observations of one or more of the covenants or conditions of this Lease or to exercise any remedy, privilege, or option conferred by this Lease on or reserved to Lessor shall not operate or be construed as a relinquishment or future waiver of the covenant or condition or the right to enforce it or to exercise that remedy, privilege, or option; that right shall continue in full force and effect. The receipt by Lessor of rent or any other payment or part of payment required to be made by Lessee shall not act to waive any other additional consideration, rent or

payment then due. Even with the knowledge of the breach of any covenant or condition of this Lease, receipt will not operate as or be deemed to be a waiver of this breach, and no waiver by Lessor of any of the provisions of this Lease, or any of Lessor's rights, remedies, privileges, or options under this Lease, will be deemed to have been made unless made by Lessor in writing.

ARTICLE 17: LIMITATIONS OF WARRANTIES

LESSEE ACKNOWLEDGES AND AGREES THAT, OTHER THAN AS MAY BE SPECIFICALLY SET FORTH HEREIN, LESSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PREMISES, (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH LESSEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT AND ANY RULES AND REGULATIONS PROMULGATED THEREUNDER OR IN CONNECTION THEREWITH, AND THE TEXAS ARCHITECTURAL BARRIERS ACT AND ANY RULES AND REGULATIONS PROMULGATED THEREUNDER OR IN CONNECTION THEREWITH, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, OR (F) ANY OTHER MATTER WITH RESPECT TO THE PREMISES, AND SPECIFICALLY THAT LESSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PREMISES, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND APPLICABLE STATE LAWS, AND REGULATIONS PROMULGATED THEREUNDER. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES, LESSEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PREMISES AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY LESSOR. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PREMISES WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT LESSOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THE USE AND OPERATION OF THE PREMISES AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE IS" CONDITION AND BASIS WITH ALL FAULTS". LESSEE ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS PARAGRAPH WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE AMOUNT OF THE RENT OF THE PREMISES. THE TERMS OF THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OF THIS LEASE.

ARTICLE 18: CONDEMNATION

If during the term of this Lease, all of the premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right or eminent domain, or are sold to the condemning authority under threat of condemnation, this Lease will terminate, effective as

of the date the condemning authority takes the premises. If only a part of the premises shall be so taken or sold, but the remainder of the premises is not capable of being used for the purposes set forth herein, Lessor may terminate this Lease, without liability, at any time within forty-five (45) calendar days following such taking or sale. Any and all payments made for or arising from any such taking or for damages to the premises resulting therefrom shall belong and be payable entirely to Lessor.

ARTICLE 19: MISCELLANEOUS PROVISIONS

- A. **Gender, Number and Headings.** Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Lease. The captions and paragraphs or letters appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the sections or articles of this Lease or affect this Lease in any way.
- B. **Place of Performance.** This Lease shall be interpreted according to the laws of the State of Texas and shall be performed in Johnson County, Texas, and exclusive jurisdiction and venue shall lie in Johnson County, Texas.
- C. **Terms Inclusive.** As used herein, the terms "Lessor" and "Lessee" include the plural whenever the context requires or admits.
- D. **Severability.** If any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Lease will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Lease is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Lease and be deemed to be validated and enforceable.
- E. **Governmental Immunity.** Nothing in this Lease shall be deemed to waive, modify or amend any legal defense or damage caps available at law or in equity to Lessor nor to create any legal rights or claim on behalf of any third party. Lessor does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- F. **No Assignment or Lease by Lessee.** Lessee may not sell or assign any interest granted herein or lease the Premises or any portion of the same or any portion of any improvement erected on said premises at any time without the prior written authorization and approval of Lessor.
- G. **No Indemnification by Lessor.** Lessee acknowledges and agrees that Lessor, as a Texas Lessor and a political subdivision of the State of Texas, under the Constitution and the laws of the State of Texas, cannot enter into an agreement whereby it agrees to indemnify or hold harmless any other party, including but not limited to Lessee; therefore, all references of any kind, if any, to Lessor indemnifying, holding or saving harmless any other party, including but not limited to Lessee, for any reason whatsoever are hereby deemed void and deleted.
- H. **Notices.** Any notice to be given hereunder shall be in writing and may be affected by personal delivery or in writing by certified mail, return receipt requested, addressed to the proper party, at the following address:

LESSOR: City of Burleson, Attn: City Manager, 141 W Renfro St, Burleson, TX 76028

LESSEE: Charles Bleeker, 908 CR 914, Burleson, TX 76028

- I. Compliance with All Statutes and Regulations. Lessee, at its expense, shall ensure compliance with any and all State, Federal, City and Lessor (and any other such regulatory body as may exercise jurisdiction over Lessee and/or the Premises) laws, ordinances, regulations, or rules regarding the erection or installment of any improvements and all permitted activities upon the Premises.
- J. Day. Unless otherwise specifically set forth in this Lease, a reference to a "day" shall mean a calendar day and not a business day.
- K. Entire Agreement. This Lease and its addenda, if any, sets forth all the promises, agreements, conditions, and understandings between Lessor and Lessee relative to the Premises and supersedes any prior understandings or written or oral agreements between the parties with respect to the to the Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Lease will be binding on Lessor or Lessee unless in writing and signed by them and made a part of this Lease by direct reference.

EXECUTED to be effective this 13th day of November, 2023.

LESSOR:

CITY OF BURLESON

By: _____
Printed Name: Tommy Ludwig
Title: City Manager

BURLESON COMMUNITY SERVICES CORPORATION

By: _____
Printed Name: _____
Title: President

LESSEE:

By: Charles Bleeker
Printed Name: Charles Bleeker

Exhibit "A"
The Premises



CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Charles Bleeker
BURLESON, TX United States

Certificate Number:
2023-1085231

Date Filed:
10/19/2023

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Burleson

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

1212
12 acres open space farm lease

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is Charles Bleeker, and my date of birth is [REDACTED].

My address is 908 CR 914 (street), Burleson (city), TX (state), 76028 (zip code), Texas (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Texas County, State of Texas, on the 19 day of Oct, 2023.
(month) (year)

Charles Bleeker
Signature of authorized agent of contracting business entity
(Declarant)

Community Services Corporation (Type B)

DEPARTMENT: Economic Development

FROM: Alex Philips, Economic Development Director

MEETING: November 13, 2023

SUBJECT:

Consider approval of 4B11132023Razzoo's1stamendment a Chapter 380 Economic Development and Performance Agreement (CSO#1754-05-2021) between the City of Burleson, Burleson Community Service Development Corporation, and Razzoo's, INC. (*Staff Presenter: Alex Philips, Economic Development Director*)

SUMMARY:

On May 17, 2021, the Burleson Community Service Development Corporation, and the City Council approved a Chapter 380 Agreement with Razzoo's, INC. for a restaurant at 135 W. Ellison. The chapter 380 agreement with Razzoo's, Inc., The City of Burleson and the Burleson Community Service Development Corporation, and includes the following performance measures for Razzoo's:

- Enter into a commercial lease agreement at the property by February 28, 2023.
- Construct a restaurant of at least 6,000 square feet and make a Capital Investment of no less than SEVEN HUNDRED-FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000) by March 31, 2023.
- Razzoo's shall routinely and regularly use the patio portions of the Development as part of the Restaurant as depicted in the Concept Plan.
- Opening Date for the Restaurant no later than March 31, 2023.

The City would offer a program grant within the chapter 380 agreement as detailed below:

- The maximum Grant Payments cumulatively available to Razzoo's over the term of this Agreement shall not exceed Five Hundred Thousand Dollars (\$500,000).
- The City shall make Grant Payments to Razzoo's in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the restaurant's operation.

- The Grants Payments shall cease upon the earlier of:
 - The date upon which the Grant Payment is paid for the twelve (12) month period following the date Razzoo's received a certificate of occupancy; or
 - The date upon which the Grant Payment Cap has been reached.

Right-of-way use agreement for to-go parking:

The parties shall work in good faith together to select, execute, and implement a right-of-way use agreement at a future date that will allow Razzoo's to utilize no more than three (3) parking spaces off of Wilson street for to-go orders from the Restaurant if the Restaurant is developed to have a to-go entrance that is separate and distinct from the main entrance to the Restaurant, subject to terms and conditions of use agreed to by the City. Nothing herein shall be construed as the City granting Razzoo's any right to use the right-of-way, but only as a duty for the parties to negotiate towards such purpose at a future date in good faith.

Razzoo's has completed all of their performance measures within the agreement, with the exception of their opening date. The agreement required Razzoo's to open by March 31, 2023. Due to supply chain disruptions and construction delays, Razzoo's opened on August 16, 2023. During that time, staff worked with Razzoo's to help facilitate City processes in the timeliest manner possible. Staff recommends amending the opening date performance measure to ensure compliance to the agreement. The amendment proposed changes the opening date performance measure to September 1, 2023.

OPTIONS:

- 1) Approve as presented
- 2) Deny

RECOMMENDATION:

Staff recommends approval

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

Explain fiscal impact if any

STAFF CONTACT:

Alex Philips
Economic Development Director
aphilps@burlesontx.com
817-426-9613



Economic Development

Razzoo's 380 Amendment

Razzoo's Ch. 380 Agreement

- Approved by the Burleson Community Service Development Corporation, and the City of Burleson on May 17, 2021
- Incentive agreement was part of a broader development agreement with BTX Old Town, LLC to construct seven buildings along Ellison Street adjacent to the Mayor Vera Calvin Plaza in response to RFP-012-2019 that was approved on December 14, 2020



Razzoo's Obligations

- Complete the lease on the Property by February 28, 2023.
- Complete construction of the Development no later than March 31, 2023, with an approximate Capital Investment of no less than \$750,000 Dollars.
- Opening Date for the Restaurant no later than March 31, 2023
- Patio to be constructed as depicted on the Site Plan



City of Burleson Obligations

Sales Tax Rebate

- Sales Tax Rebate would include the General Fund portion (1%) and the Burleson Community Service Development Corporation portion – 4B (1/2%)
- Sales Tax Rebate would be capped at \$500,000
- The City shall make Grant Payments to Razzoo's in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the restaurant's operation.
- The term of the agreement is for 10 years or if the cap is reached prior to 10 years the agreement would terminate.



Amendment

- Razzoo's has completed all of their performance measures within the agreement, with the exception of their opening date.
- The agreement required Razzoo's to open by March 31, 2023. Due to supply chain disruptions and construction delays, Razzoo's opened on August 16, 2023.
- During that time, staff worked with Razzoo's to help facilitate City processes in the timeliest manner possible.
- The amendment proposed changes the opening date performance measure to September 1, 2023.



Board Action

- Approve an amendment of a Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson Community Service Development Corporation, and Razzoo's, INC.
- Deny an amendment of a Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson Community Service Development Corporation, and Razzoo's, INC.

*Staff Recommends approval



FIRST AMENDMENT TO

CHAPTER 380 AND ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON COMMUNITY SERVICE DEVELOPMENT CORPORATION, AND RAZZOO'S, INC.

This First Amendment to the Chapter 380 Economic Development Agreement (“Amendment”) is made and entered into as of November 13, 2023 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 Burleson Community Service Development Corporation (“BCSDC”) acting by and through its Board President, and Razzoo’s, Inc., (“Razzoo’s”) a Texas corporation, by and through its authorized executive.

RECITALS:

WHEREAS, on or about May 17, 2021, the City, the BCSDC, and Razzoo’s entered into that Chapter 380 Economic Development Agreement (the “Agreement,” attached hereto as Exhibit “A” and incorporated herein by reference for all purposes); and

WHEREAS, the parties desire to amend the Agreement by revising it to read as set forth below, with all other terms to remain unchanged.

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:

1. **Amendment.** Subsection (F) of Section 4.01 entitled “Covenants Regarding RAZZOO’S Development and Operations” of Article 4 entitled “Covenants of Razzoo’s” of the Agreement is hereby amended by revising 4.01(F) to read as follows:

“(F) Opening Date for the Restaurant no later than September 1, 2023, subject to Article 12 of this Agreement.”

2. **Effect of Amendment.** All other terms and conditions of the Agreement, with the exception of the terms modified by this Amendment, shall remain in full force and effect. Except for the terms modified by this Amendment, the parties hereby ratify the remainder of the Agreement in its entirety.

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

**THE CITY OF BURLESON,
a Texas municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on _____, 2023 by _____, known personally by me to be the _____ of the City of Burleson, on behalf of said City.

[Notary Seal]

Notary Public, State of Texas

APPROVED AS TO FORM:

City Attorney

**BURLESON COMMUNITY SERVICES
ECONOMIC DEVELOPMENT
CORPORATION,
a Texas economic development corporation**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on _____, 2023 by
_____, known personally by me to be the _____ of the
Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

Notary Public, State of Texas

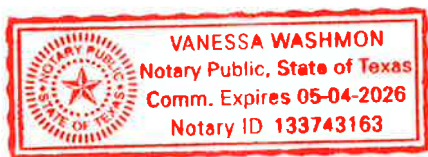
RAZZOO'S, INC.,
A Texas corporation


By: Name: THOMAS MARSHALLTitle: CFODate: 10/18/23

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on 10/18, 2023 by THOMAS MARSHALL, known personally by me to be the CFO of Razzoo's, Inc., on behalf of said entity.

[Notary Seal]




Notary Public, State of Texas

**Exhibit “A”
The Agreement**

**CHAPTER 380 AND ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF BURLESON, THE BURLESON COMMUNITY SERVICE DEVELOPMENT
CORPORATION, AND RAZZOO'S, INC.**

This Chapter 380 Economic Development and Performance Agreement (the "Agreement") is entered into as of 5-18-21 (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 Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and RAZZOO'S, Inc., ("RAZZOO'S") a Texas 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, RAZZOO'S 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 RAZZOO'S'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, the City has established an entertainment, tourist, public park, and open space 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 Old Town, LLC, a Texas limited liability corporation ("BTX"), pursuant to a Chapter 380 and Economic Development and Performance Agreement for Public and Private Improvements in Tax Increment Financing Reinvestment Zone Number Two with the City, the Burleson 4A Economic Development Corporation, and the Tax Increment Financing Reinvestment Zone Number Two, is developing 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; and

WHEREAS, RAZZOO'S is under contract with BTX to lease certain land and to-be-constructed improvements on one of the lots or tracts located at 135 West Ellison Street, Burleson, Texas, as depicted on **Exhibit "A"** (the "Property"), and the Property is located in the City of Burleson, Johnson County, Texas; and

WHEREAS, RAZZOO'S proposes to operate a restaurant on the Property; and

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

WHEREAS, the BCSDC has determined and found that the incentives and grant of sales tax proceeds 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 505.152, in that the expenditures are for a restaurant and concession related and directly adjacent to the Plaza that enhance the Plaza; 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 RAZZOO'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 and Chapters 501 and 505 of the Texas Local Government Code.

ARTICLE 2. **DEFINITIONS**

- 2.01 The terms "Agreement," "BCSDC," "BTX," "City," "Effective Date," "Plaza," "Program," "Property," and "RAZZOO'S" shall have the meanings provided, above.
- 2.02 "Available Sales Taxes" means the amount of Sales Tax actually and lawfully received by the City from the Texas Comptroller of Public Accounts attributable to

gross taxable sales at the Restaurant during each calendar year or portion thereof during the Term of this Agreement.

- 2.03 "Capital Investment" means and shall include all tenant finish-out costs incurred relating to the improvement of the Property, including actual construction costs of structures, landscaping, and other onsite improvements, including all labor and materials, but shall not include the purchase price of the building and actual construction costs of all buildings, utilities, and infrastructure.
- 2.04 "City Sales Tax" means the tax authorized and levied pursuant to Section 321.101 of the Texas Tax Code and payable into the general fund, currently established at one percent (1%). City Sales Taxes shall not include sales and/or use taxes levied and collected exclusively for special purposes (such as a Type A or B Corporation) created and operating under the Development Corporation Act, codified in subtitle C1 of Title 12, Texas Local Government Code, transit districts. If the City, at its discretion ever elects to, or the voters choose to, reallocate the City Sales Tax and to levy less than a one percent (1%) sales tax, then "City Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual City Sales Tax levied on gross taxable sales. Should the voters or the City set the City Sales Tax rate at more than one percent (1%), the City Sales Tax will not exceed one percent (1%).
- 2.05 "Concept Plan" means the plan depicted on **Exhibit "B"**.
- 2.06 "Development" means the construction of the Restaurant and related landscaping and onsite infrastructure on the Property.
- 2.07 "Grant Payment(s)" means the periodic payments of a percentage of Available Sales Taxes as provided herein.
- 2.08 "Grant Payment Cap" has the meaning set forth in Section 5.02 of this Agreement.
- 2.09 "Incentives" mean the combined contributions, monetary or otherwise, of the City and the BCSDC towards completion of the Development, as required by this Agreement.
- 2.10 "Opening Date" means that date on which RAZZOO'S opens the Restaurant.
- 2.11 "Property" means located at 135 West Ellison, Burleson, Texas.
- 2.12 "Restaurant" means a RAZZOO'S sit down and take out restaurant comprised of approximately 6,000 square feet, which includes outdoor patio, located on the Property operated in a manner substantially similar to the RAZZOO'S Cajun Cafe located at 1414 Market Place Blvd, Irving, TX 75063.
- 2.13 "Sales Tax" shall mean the combination of the City Sales Tax and Type B Sales Tax, the combination of which is currently established at one and one-half percent (1.5%).

- 2.14 "Type B Sales Tax" means the tax authorized, adopted, levied and/or collected by or on behalf of the City pursuant to Section 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently established at one-half of one percent (0.5%), for use by the Burleson Community Service Development Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Type B Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type B Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual Type B Sales Tax levied on gross taxable sales. Should the voters or the City set the Type B Sales Tax rate at more than one-half of one percent (0.5%), the Type B Sales Tax will not exceed one-half of one percent (0.5%).

ARTICLE 3. **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate ten (10) years following the date RAZZOO'S receives a Certificate of Occupancy on the Property.

ARTICLE 4. **COVENANTS OF RAZZOO'S**

- 4.01 Covenants Regarding RAZZOO'S Development and Operations. In consideration of City agreeing to pay RAZZOO'S the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, RAZZOO'S agrees to the following, which are not obligations of RAZZOO'S, but are duties that must be fulfilled in order to receive Grant Payments:
- (A) To the extent allowed under the agreement with BTX for the construction of the Development, design and construct 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) To the extent allowed under the agreement with BTX for the construction of the Development, design and construct the Development in substantial conformance with the Concept Plan.
 - (C) Operate the Development and Restaurant in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.

- (D) Enter into a valid, written commercial lease agreement for operation of the Restaurant at the Property by February 28, 2023.
 - (E) Make a Capital Investment of no less than SEVEN HUNDRED-FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000) by March 31, 2023.
 - (F) Opening Date for the Restaurant no later than March 31, 2023, subject to Article 12 of this Agreement.
 - (G) After the Opening Date, RAZZOO'S 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 ninety (90) days.
 - (H) RAZZOO'S 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.
 - (I) RAZZOO'S shall routinely and regularly use the patio portions of the Development as part of the Restaurant as depicted in the Concept Plan.
 - (J) After the Opening Date, RAZZOO'S shall work in good faith with the City to reasonably schedule, plan and coordinate use of the patio portion of the Development with events that will occur in the Plaza.
- 4.02 Verification of Capital Investment. Within 30 days following the Opening Date, upon written request of the City, RAZZOO'S shall (or shall cause one of its Affiliate to) provide written verification to the City that the Capital Investment made by RAZZOO'S meets or exceeds the requirements set forth in this Agreement. The City may request, and RAZZOO'S hereby agrees that it will (and will cause its Affiliates to) permit reasonable review of information (at no cost, expense or liability to any RAZZOO'S or Affiliate) that permits the City to verify that the Capital Investment made by RAZZOO'S meets or exceeds the requirements of this Agreement, excluding (i) financial information of any BCS Entity or an Affiliate not related to the corresponding Improvements, and (ii) proprietary information.

ARTICLE 5. PROGRAM GRANT

- 5.01 Subject to RAZZOO'S complying with his duties and obligations under this Agreement, the City agrees that, subject to the terms and conditions contained herein, RAZZOO'S shall be entitled to receive Grant Payments and benefits according to the schedule set forth in this Article.
- 5.02 The maximum Grant Payments cumulatively available to RAZZOO'S over the term of this Agreement shall not exceed Five Hundred Thousand Dollars (\$500,000).

- 5.03 The City shall make Grant Payments to RAZZOO'S in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the restaurant's operation.
- 5.04 The Grants Payments shall cease upon the earlier of:
- (A) The date upon which the Grant Payment is paid for the final twelve (12) month period ending ten years following the date RAZZOO'S receives a Certificate of Occupancy on the Property; or
 - (B) The date upon which the Grant Payment Cap has been reached.
- 5.05 For each calendar year in which a grant payment is requested, RAZZOO'S agrees to provide a release to the City that will allow the Texas Comptroller of Public Accounts (the "Comptroller") to release information to the City that documents the amount of Available Sales Taxes collected by the Comptroller for the City from the Restaurant (the "Sales Tax Disclosure"). The City and RAZZOO'S shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement. City shall not be required to pay RAZZOO'S the Grant Payments under this Article until such time that RAZZOO'S provides the required release and the Comptroller provides the Sales Tax Disclosure.
- 5.06 Following receipt of the Sales Tax Disclosure and the receipt of Available Sales Taxes by City, City shall pay RAZZOO'S the annual installment of Grant Payments due hereunder, subject to the terms and provisions of this Agreement, within 60 days. Both parties acknowledge that as of the Effective Date of this Agreement, the Sales Tax Disclosure and disbursement of Available Sales Taxes for the prior calendar year to City by Comptroller is expected to occur no sooner than March 1 of each calendar year.

ARTICLE 6.
RIGHT-OF-WAY USE AGREEMENT

- 6.01 The parties shall work in good faith together to select, execute, and implement a right-of-way use agreement at a future date that will allow RAZZOO'S to utilize no more than three (3) parking spaces off of Wilson street for to-go orders from the Restaurant if the Restaurant is developed to have a to-go entrance that is separate and distinct from the main entrance to the Restaurant, subject to terms and conditions of use agreed to by the City. Nothing herein shall be construed as the City granting RAZZOO'S any right to use the right-of-way, but only as a duty for the parties to negotiate towards such purpose at a future date in good faith.

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, RAZZOO'S 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, RAZZOO'S 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) RAZZOO'S'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 RAZZOO'S 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 RAZZOO'S 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 RAZZOO'S and this Agreement constitutes the legal, valid and binding obligation of RAZZOO'S, and is enforceable in accordance with its terms and provisions.
- 8.02 Notwithstanding any other provision of this Agreement, RAZZOO'S shall comply with all federal, state, and local laws.
- 8.03 During the term of this Agreement, RAZZOO'S 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), RAZZOO'S shall repay the amount of the Incentives received by RAZZOO'S as of the date of such violation within 120 business days after the date RAZZOO'S 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 RAZZOO'S's violation of this Article.

**ARTICLE 9.
DEFAULT AND REMEDIES**

9.01 Default by RAZZOO'S.

- (A) In the event: (i) RAZZOO'S fails to fulfill its obligations under Article 4 of this Agreement; (ii) RAZZOO'S has delinquent ad valorem or sales taxes owed to the City provided that RAZZOO'S retains the right to timely and properly protest and/or contest any such taxes; or (iii) RAZZOO'S materially breaches any of the material terms and conditions of this Agreement, then RAZZOO'S 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 RAZZOO'S written notice of such breach and/or default, and if RAZZOO'S 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 RAZZOO'S, and the City shall have no further obligation to RAZZOO'S.
- (B) In the event RAZZOO'S fails to comply with Section 4.01 and closes or ceases operation prior to the end of the Term of this Agreement, RAZZOO'S shall not be entitled to any additional payments from City.

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.
RIGHT OF OFFSET**

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

**ARTICLE 11.
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 12.
FORCE MAJEURE**

Performance of RAZZOO'S obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and RAZZOO'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 13.
GIFT TO PUBLIC SERVANT OR TO RAZZOO'S REPRESENTATIVE**

- 13.01 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.
- 13.02 Right of Reimbursement. Notwithstanding any other legal remedies, City may obtain reimbursement for any expenditure made to RAZZOO'S as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

**ARTICLE 14.
ASSIGNMENT**

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

**ARTICLE 15.
INDEMNIFICATION**

- 15.01 RAZZOO'S 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 RAZZOO'S 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 RAZZOO'S and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- 15.02 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 RAZZOO'S's construction of the Development.

ARTICLE 16. MISCELLANEOUS MATTERS

- 16.01 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.
- 16.02 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.
- 16.03 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.
- 16.04 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.
- 16.05 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.
- 16.06 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.

16.07 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.

16.08 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.

RAZZOO'S: RAZZOO'S, Inc.
Philip Parsons
Chief Financial Officer
14131 Midway Rd, Suite 750
Addison, TX 75001

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

BCSDC: Burleson Community Services Development Corp.
Attn: Board 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

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

16.10 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

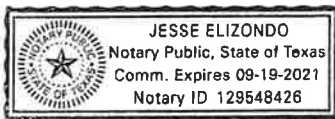
By: [Signature]
Bryan Langley, City Manager

Date: 5/17/21

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on 5/17, 2021 by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]



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

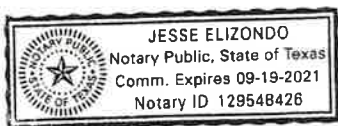
BURLESON COMMUNITY SERVICES
ECONOMIC DEVELOPMENT CORPORATION

By: [Signature]
 Name: Katherine Reading
 Title: Board President
 Date: 5/17/21

STATE OF TEXAS
 COUNTY OF Duval/Tarrant

This instrument was acknowledged before me on 5/17, 2021 by Katherine Reading, known personally by me to be the Board President of the Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]



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

RAZZOO'S, INC.,
a Texas limited liability company

By: Philip M. Parsons

Name: PHILIP PARSONS

Title: CFO

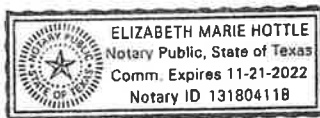
Date: 5/21/2021

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on May 21, 2021 by
Philip Parsons, known personally by me to be the CFO
of RAZZOO'S, Inc., on behalf of said entity.

[Notary Seal]

Elizabeth Marie Hottle
Notary Public, State of Texas

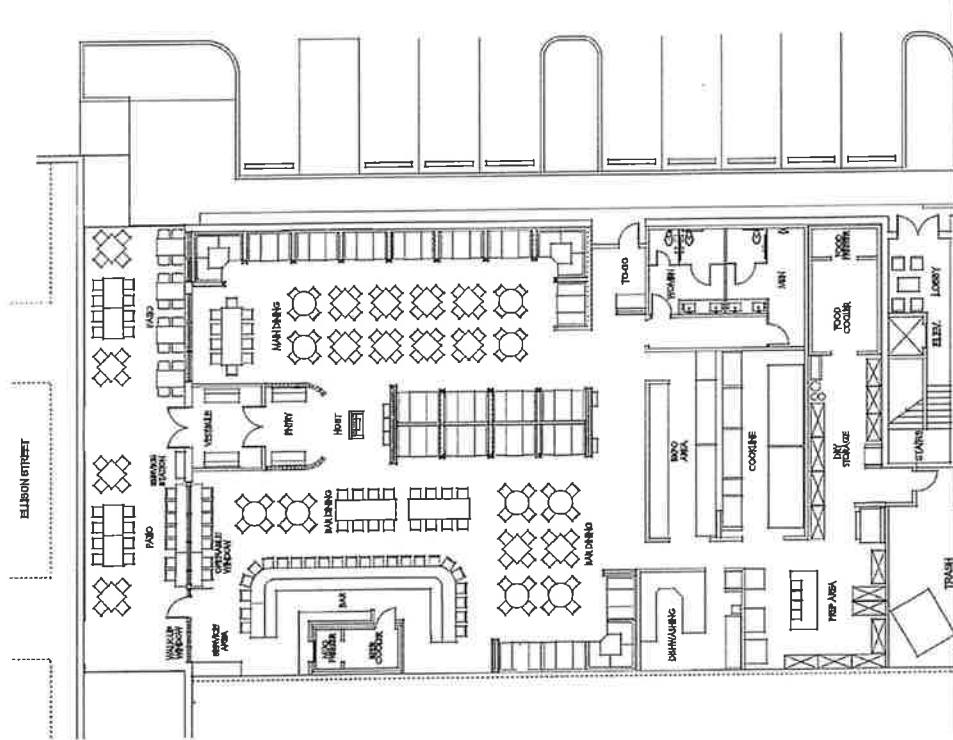


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Exhibit "B"

Test Fit



INTERIOR - 6,673 SQ.FT
PATIO - 859 SQ.FT

INTERIOR DINING - 227 SEATS
PATIO - 55 SEATS
TOTAL SEATING: 282 SEATS



Community Services Corporation (Type B)

DEPARTMENT: Economic Development

FROM: Alex Philips, Economic Development Director

MEETING: November 13, 2023

SUBJECT:

Consider approval of 4B11132023Heim1stamendment, an amendment of a Chapter 380 Economic Development and Performance Agreement (CSO#1653-01-2021) between the City of Burleson, Burleson Community Service Development Corporation, and Heim Burleson, LLC. (Staff Presenter: Alex Philips, Economic Development Director)

SUMMARY:

On January 19, 2021, the Burleson Community Service Development Corporation, and the City Council approved a Chapter 380 Agreement with Heim Burleson, LLC. for a restaurant at 139 W. Ellison. The agreement includes the following performance measures for Heim Burleson:

- Commence construction of the Development no later than January 1, 2022, complete construction of the Development no later than December 31, 2022, with an approximate Capital Investment of no less than \$1,200,000 Dollars, with the Opening Date for the Restaurant no later than January 1, 2023, subject to Article 12 of this Agreement.
- Heim shall routinely and regularly use the rooftop portion of the Development as part of the Restaurant.
- After the Opening Date, Heim shall reserve no fewer than six (6) days every calendar year for coordinated events with the City that will occur simultaneously in the Plaza and the Heim rooftop. Heim agrees with work in good faith with the City to schedule, plan, coordinate, and hold such events.

The City would offer a program grant within the chapter 380 agreement as detailed below:

- The maximum Grant Payments cumulatively available to Heim over the term of this Agreement shall not exceed Three Hundred and Fifty Thousand Dollars (\$350,000).
- The City shall make Grant Payments to Heim in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the restaurant's operation.

- The Grants Payments shall cease upon the earlier of:
 - The date upon which the Grant Payment is paid for the twelve (12) month period ending December 31, 2030; or
 - The date upon which the Grant Payment Cap (\$350,000) has been reached.

Heim has completed all of their performance measures within the agreement, with the exception of the complete construction and opening date. Staff discovered an error in the dates included in the original agreement which caused Heim to miss the complete construction date. Due to supply chain disruptions and construction delays, Heim plans to open by the end of 2023. Staff recommends amending the complete construction and opening dates to ensure compliance and correct an error in the dates in the original agreement to the agreement. The amendment proposed changes the complete construction date to December 31, 2023 opening date performance measure to February 1, 2024.

OPTIONS:

- 1) Approve as presented
- 2) Deny

RECOMMENDATION:

Staff recommends approval

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

Explain fiscal impact if any

STAFF CONTACT:

Alex Philips
Economic Development Director
aphilps@burlesontx.com
817-426-9613



Economic Development Heim BBQ 380 Amendment

Heim Ch. 380 Agreement

- Approved by the Burleson Community Service Development Corporation, and the City of Burleson on January 19, 2021
- Incentive agreement was part of a broader development agreement with BTX Old Town, LLC to construct seven buildings along Ellison Street adjacent to the Mayor Vera Calvin Plaza in response to RFP-012-2019 that was approved on December 14, 2020



Heim's Obligations

- Commence construction by January 1, 2022 and complete construction by December 31, 2022 with a capital investment of no less than \$1,200,000
- Opening Date for the Restaurant no later than January 31, 2023.
- Upstairs Patio to be constructed as depicted on the Site Plan.



City of Burleson Obligations

Sales Tax Rebate

- Sales Tax Rebate would include the General Fund portion (1%) and the Burleson Community Service Development Corporation portion – 4B (1/2%)
- Sales Tax Rebate would be capped at \$350,000
- The City shall make Grant Payments to Heim BBQ in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the restaurant's operation.
- The term of the agreement is until December 31, 2030 or if the cap is reached.



Amendment

- Heim has completed all of their performance measures within the agreement, with the exception of their opening date.
- Due to supply chain disruptions and construction delays, Heim plans to open by December 31, 2023.
- Staff has worked with Heim to help facilitate City processes in the timeliest manner possible.
- The amendment proposed changes complete construction date to December 31, 2023 the opening date performance measure to February 1, 2024.



Board Action

- Approve an amendment of a Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson Community Service Development Corporation, and Heim Burleson, LLC.
- Deny an amendment of a Chapter 380 Economic Development and Performance Agreement between the City of Burleson, Burleson Community Service Development Corporation, and Heim Burleson, LLC.

*Staff Recommends approval



FIRST AMENDMENT TO
CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE
AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON
COMMUNITY SERVICE DEVELOPMENT CORPORATION,
AND HEIM BURLESON, LLC

This First Amendment to the Chapter 380 Economic Development and Performance Agreement (“Amendment”) is made and entered into as of November 13, 2023 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 Burleson Community Service Development Corporation (“BCSDC”) acting by and through its Board President, and Heim Burleson, LLC, (“Heim”) a Texas limited liability corporation, by and through its authorized manager.

RECITALS:

WHEREAS, on or about January 19, 2021, the City, the BCSDC, and Heim entered into that Chapter 380 Economic Development and Performance Agreement (the “Agreement,” attached hereto as Exhibit “A” and incorporated herein by reference for all purposes); and

WHEREAS, the parties desire to amend the Agreement by revising it to read as set forth below, with all other terms to remain unchanged.

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:

1. **Amendments.** The following amendments are hereby made to the Agreement:
 - i. Subsection (E) of Section 4.01 entitled “Covenants Regarding Heim Development and Operations” of Article 4 entitled “Covenants of Heim” of the Agreement is hereby amended by revising 4.01(E) to read as follows:

“(E) Commence construction of the Development no later than January 1, 2022, complete construction of the Development no later than December 31, 2023, with an approximate Capital Investment of no less than ONE MILLION TWO HUNDRED THOUSAND AND NO/100s DOLLARS (\$1,200,000.00), with the Opening Date for the Restaurant no later than February 1, 2024, subject to Article 12 of this Agreement.”
 - ii. Exhibit “A” as referenced in the recitals is hereby amended to read as the Exhibit “A” attached to this Amendment.
 - iii. Exhibit “B” as referenced in Section 2.05 entitled “Concept Plan” of Article 2 entitled “Definitions” of the Agreement is hereby amended to read as the Exhibit “B” attached to this Amendment.



2. **Effect of Amendment.** All other terms and conditions of the Agreement, with the exception of the terms modified by this Amendment, shall remain in full force and effect. Except for the terms modified by this Amendment, the parties hereby ratify the remainder of the Agreement in its entirety.

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

**THE CITY OF BURLESON,
a Texas municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on _____, 2023 by _____, known personally by me to be the _____ of the City of Burleson, on behalf of said City.

[Notary Seal]

Notary Public, State of Texas

APPROVED AS TO FORM:

City Attorney

**BURLESON COMMUNITY SERVICES
ECONOMIC DEVELOPMENT
CORPORATION,
a Texas economic development corporation**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on _____, 2023 by
_____, known personally by me to be the _____ of the
Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

Notary Public, State of Texas

**HEIM BURLESON, LLC,
A Texas limited liability company**

By: *[Signature]*

Name: DAVID SHIPMAN

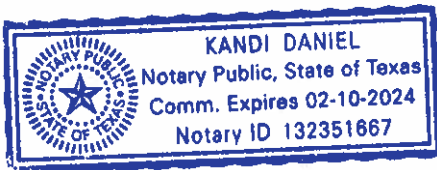
Title: Authorized Agent

Date: 11/6/23

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on Nov. 6, 2023 by DAVID SHIPMAN, known personally by me to be the Authorized Agent of Heim Burleson, LLC, on behalf of said entity.

[Notary Seal]



Kandi Daniel
Notary Public, State of Texas

[Handwritten initials]

Exhibit "A"
The Agreement



CSO#1653-01-2021

**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE
AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON COMMUNITY
SERVICE DEVELOPMENT CORPORATION, AND HEIM BURLESON, LLC**

This Chapter 380 Economic Development and Performance Agreement (the "Agreement") is entered into as of 1/19/21 (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 Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and Heim Burleson, LLC, ("Heim") 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, Heim 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 Heim'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, the City has established an entertainment, tourist, public park, and open space 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 Old Town, LLC, a Texas limited liability corporation ("BTX"), pursuant to a Chapter 380 and Economic Development and Performance Agreement for Public and Private Improvements in Tax Increment Financing Reinvestment Zone Number Two with the City, the Burleson 4A Economic Development Corporation, and the Tax Increment Financing Reinvestment Zone Number Two, is developing 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; and

WHEREAS, Heim is under contract with BTX to purchase certain land and to-be-constructed improvements on one of the lots or tracts located at 135 West Ellison Street, Burleson, Texas, as depicted on Exhibit "A" (the "Property"), and the Property is located in the City of Burleson, Johnson County, Texas; and

WHEREAS, Heim proposes to operate a restaurant 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 BCSDC 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 505.152, in that the expenditures are for a restaurant and concession related and directly adjacent to the Plaza that enhance the Plaza; 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 and Chapters 501 and 505 of the Texas Local Government Code.

ARTICLE 2. **DEFINITIONS**

- 2.01 The terms "Agreement," "BCSDC," "BTX," "City," "Effective Date," "Heim," "Plaza," "Program," and "Property," shall have the meanings provided, above.
- 2.02 "Available Sales Taxes" means the amount of Sales Tax actually and lawfully received by the City from the Texas Comptroller of Public Accounts attributable to

gross taxable sales at the Restaurant during each calendar year or portion thereof during the Term of this Agreement.

- 2.03 "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 improvements, including all labor and materials.
- 2.04 "City Sales Tax" means the tax authorized and levied pursuant to Section 321.101 of the Texas Tax Code and payable into the general fund, currently established at one percent (1%). City Sales Taxes shall not include sales and/or use taxes levied and collected exclusively for special purposes (such as a Type A or B Corporation) created and operating under the Development Corporation Act, codified in subtitle C1 of Title 12, Texas Local Government Code, transit districts. If the City, at its discretion ever elects to, or the voters choose to, reallocate the City Sales Tax and to levy less than a one percent (1%) sales tax, then "City Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual City Sales Tax levied on gross taxable sales. Should the voters or the City set the City Sales Tax rate at more than one percent (1%), the City Sales Tax will not exceed one percent (1%).
- 2.05 "Concept Plan" means the plan depicted on Exhibit "B".
- 2.06 "Development" means the construction of the Restaurant and related landscaping and onsite infrastructure on the Property.
- 2.07 "Grant Payment(s)" means the periodic payments of a percentage of Available Sales Taxes as provided herein.
- 2.08 "Grant Payment Cap" has the meaning set forth in Section 5.02 of this Agreement.
- 2.09 "Incentives" mean the combined contributions, monetary or otherwise, of the City and the BCSDC towards completion of the Development, as required by this Agreement.
- 2.10 "Opening Date" means that date on which Heim opens the Restaurant.
- 2.11 "Property" means located at 135 West Ellison, Burleson, Texas.
- 2.12 "Restaurant" means a Heim Barbeque sit down and take out restaurant comprised of approximately 5,000 square feet located on the Property operated in a manner substantially similar to the Heim Barbeque located at 1109 W. Magnolia Avenue, Fort Worth, Texas.
- 2.13 "Sales Tax" shall mean the combination of the City Sales Tax and Type B Sales Tax, the combination of which is currently established at one and one-half percent (1.5%).

- 2.14 "Type B Sales Tax" means the tax authorized, adopted, levied and/or collected by or on behalf of the City pursuant to Section 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently established at one-half of one percent (0.5%), for use by the Burleson Community Service Development Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Type B Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type B Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual Type B Sales Tax levied on gross taxable sales. Should the voters or the City set the Type B Sales Tax rate at more than one-half of one percent (0.5%), the Type B Sales Tax will not exceed one-half of one percent (0.5%).

ARTICLE 3. **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate ten years following the date Heim receives a Certificate of Occupancy on the Property.

ARTICLE 4. **COVENANTS OF HEIM**

- 4.01 Covenants Regarding Heim Development and Operations. In consideration of City agreeing to pay Heim the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Heim agrees to the following, which are not obligations of Heim, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:
- (A) To the extent allowed under the agreement with BTX for the construction of the Development, design and construct 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) To the extent allowed under the agreement with BTX for the construction of the Development, design and construct the Development in substantial conformance with the Concept Plan.
 - (C) 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.
 - (D) Complete the closing on the Property by December 31, 2022.

- (E) Commence construction of the Development no later than January 1, 2022, complete construction of the Development no later than December 31, 2022, with an approximate Capital Investment of no less than ONE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,200,000.00), with the Opening Date for the Restaurant no later than January 1, 2023, subject to Article 12 of this Agreement.
- (F) After the Opening Date, Heim 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 ninety (90) days.
- (G) Heim 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.
- (H) Heim shall routinely and regularly use the rooftop portion of the Development as part of the Restaurant.
- (I) After the Opening Date, Heim shall work in good faith with the City to reasonably schedule, plan, coordinate, and hold coordinated events that will occur simultaneously in the Plaza and the Heim rooftop.

**ARTICLE 5.
PROGRAM GRANT**

- 5.01 Subject to Heim complying with his duties and obligations under this Agreement, the City agrees that, subject to the terms and conditions contained herein, Heim shall be entitled to receive Grant Payments and benefits according to the schedule set forth in this Article.
- 5.02 The maximum Grant Payments cumulatively available to Heim over the term of this Agreement shall not exceed Three Hundred and Fifty Thousand Dollars (\$350,000).
- 5.03 The City shall make Grant Payments to Heim in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the restaurant's operation.
- 5.04 The Grants Payments shall cease upon the earlier of:
 - (A) The date upon which the Grant Payment is paid for the final twelve (12) month period ending ten years following the date Heim receives a Certificate of Occupancy on the Property; or
 - (B) The date upon which the Grant Payment Cap has been reached.
- 5.05 For each calendar year in which a grant payment is requested, Heim agrees to provide a release to the City that will allow the Texas Comptroller of Public

Accounts (the "Comptroller") to release information to the City that documents the amount of Available Sales Taxes collected by the Comptroller for the City from the Restaurant (the "Sales Tax Disclosure"). The City and Heim shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement. City shall not be required to pay Heim the Grant Payments under this Article until such time that Heim provides the required release and the Comptroller provides the Sales Tax Disclosure.

- 5.06 Following receipt of the Sales Tax Disclosure and the receipt of Available Sales Taxes by City, City shall pay Heim the annual installment of Grant Payments due hereunder, subject to the terms and provisions of this Agreement, within 60 days. Both parties acknowledge that as of the Effective Date of this Agreement, the Sales Tax Disclosure and disbursement of Available Sales Taxes for the prior calendar year to City by Comptroller is expected to occur no sooner than March 1 of each calendar year.

ARTICLE 6. **INCENTIVES**

- 6.01 Subject to Heim complying with its duties and obligations under this Agreement, the City agrees to the following incentives: The City shall reimburse to Heim an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) for expenses related to the open air rooftop patio/bar overlooking the Plaza, upon Heim receiving the Certificate of Occupancy for the establishment and providing proof of costs reasonably satisfactory to the City.
- 6.02 The BCSDC authorizes the expenditure of up to One Hundred Thousand Dollars (\$100,000.00) for the incentives. The BCSDC 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.

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, Heim 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, Heim 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) HEIM'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 HEIM 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 HEIM 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 Heim and this Agreement constitutes the legal, valid and binding obligation of Heim, and is enforceable in accordance with its terms and provisions.
- 8.02 Notwithstanding any other provision of this Agreement, Heim shall comply with all federal, state, and local laws.
- 8.03 During the term of this Agreement, Heim 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), Heim shall repay the amount of the incentives received by Heim as of the date of such violation within 120 business days after the date Heim 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 Heim's violation of this Article.

ARTICLE 9. DEFAULT AND REMEDIES

- 9.01 Default by Heim.
- (A) In the event (i) Heim fails to fulfill its obligations under Article 4 of this Agreement; (ii) Heim has delinquent ad valorem or sales taxes owed to the City provided that Heim retains the right to timely and properly protest and/or contest any such taxes; or (iii) Heim materially breaches any of the material terms and conditions of this Agreement, then Heim 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 Heim written notice of such breach and/or default, and if Heim 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 Heim, and the City shall have no further obligation to Heim.

(B) In the event Heim fails to comply with Section 4.01 and closes or ceases operation prior to the end of the Term of this Agreement, Heim shall not be entitled to any additional payments from City.

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.

9.03 If the Property is converted to a use other than the Restaurant within four (4) years from the date of Heim receiving the Certificate of Occupancy for the Restaurant, Heim shall reimburse the City an amount equal to the total amount of the Incentive paid pursuant Section 6.01 less \$25,000.00 for every full year Heim remained on the Property in accordance this Agreement.

ARTICLE 10. **RIGHT OF OFFSET**

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

ARTICLE 11. **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 12. **FORCE MAJEURE**

Performance of Heim's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Heim'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 13.

GIFT TO PUBLIC SERVANT OR TO HEIM REPRESENTATIVE

13.01 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.

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

ARTICLE 14.

ASSIGNMENT

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

ARTICLE 15.

INDEMNIFICATION

15.01 HEIM 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 HEIM 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 Helm and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

- 15.02 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 Heim's construction of the Development.

ARTICLE 16. MISCELLANEOUS MATTERS

- 16.01 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.
- 16.02 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.
- 16.03 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.
- 16.04 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.
- 16.05 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.
- 16.06 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.
- 16.07 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.

16.08 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.

Heim: Burleson Heim, LLC

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

BCSDC: Burleson Community Services Development Corp.
Attn: Board 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

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

16.10 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

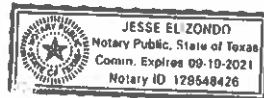
By: 
Bryan Langley, City Manager
Date: 1/19/21

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on 1/19, 2021 by Bryan Langley, known personally by me to be the City Manager of the City of Burleson, on behalf of said City.

[Notary Seal]


Notary Public, State of Texas



BURLESON COMMUNITY SERVICES
ECONOMIC DEVELOPMENT CORPORATION

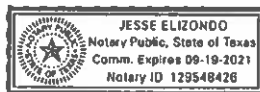
By: Katherine Reading
 Name: Katherine Reading
 Title: Board President
 Date: 1/19/21

STATE OF TEXAS
 COUNTY OF Johnson

This instrument was acknowledged before me on 1/19, 2021 by
Katherine Reading, known personally by me to be the Board President of the
 Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]

Jesse Elizondo
 Notary Public, State of Texas



HEIM BURLESON, LLC,
a Texas limited liability company

By: [Signature]

Name: David Shipman

Title: Authorized Agent

Date: 1/21/21

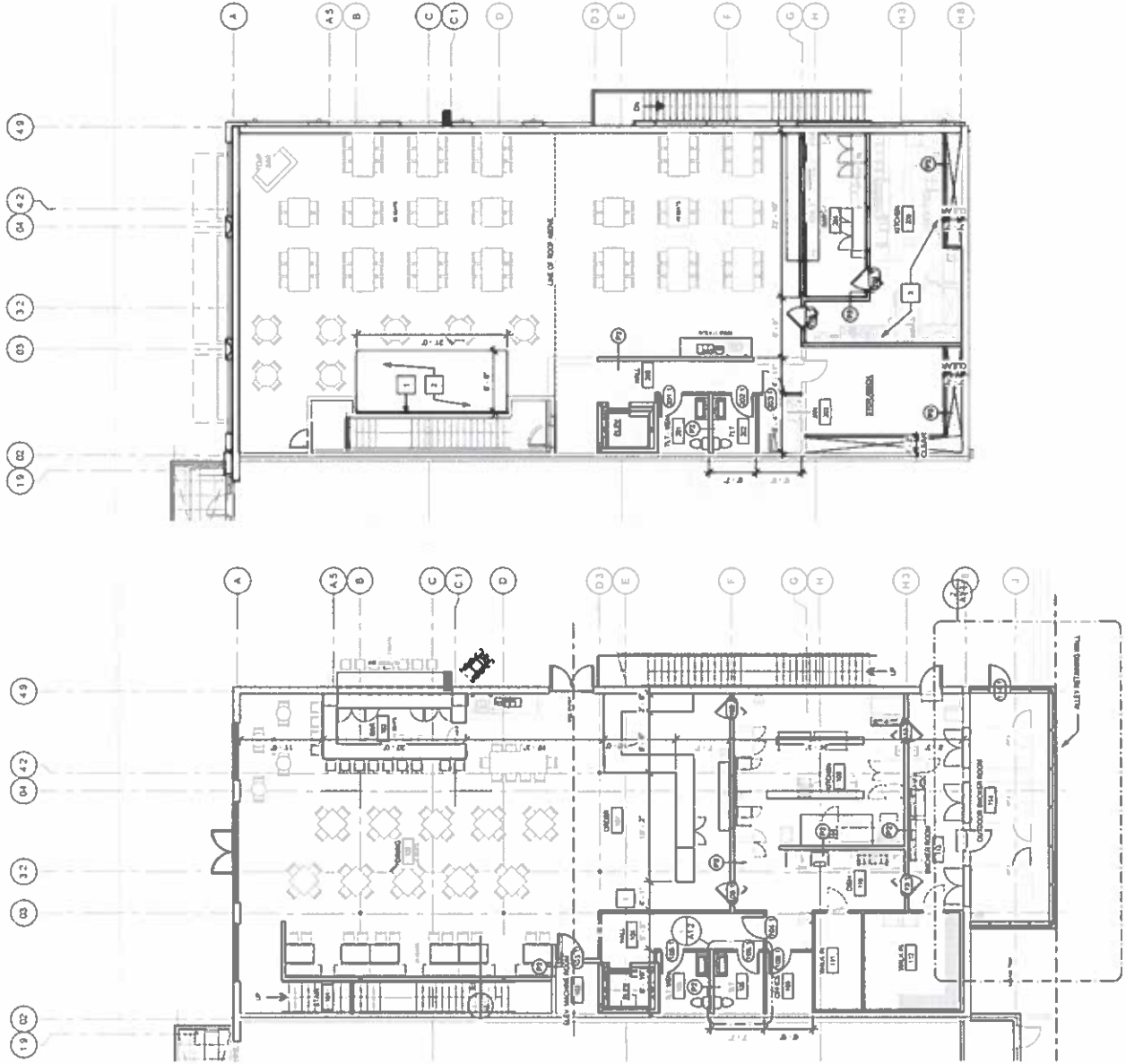
STATE OF TEXAS
COUNTY OF Tarrant

This instrument was acknowledged before me on January 21, 2021 by
David Shipman, known personally by me to be the Authorized Agent
of Heim Burleson, LLC, on behalf of said entity.



[Signature]
Notary Public, State of Texas





① $1.0' = 1'-0"$

② $1/5 = 1/5$

NOTE: IF FOR PRACTICE ONLY, ALL INFORMATION OF THIS TYPE IS UNCLASSIFIED AND IS IN THE PUBLIC DOMAIN.

1994-1995

[illegible]

Abstract

[illegible]

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