

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BURLESON AND HARD EIGHT BURLESON, LLC

This Economic Development Agreement (the "Agreement") is entered into as of 11/13/17 (the "Effective Date") by and between the City of Burleson, a Texas municipal corporation located in the Counties of Johnson and Tarrant, State of Texas ("City"), by and through its City Manager, and Burleson Hard Eight, LLC ("BHE"), a Texas limited liability corporation, by and through its President, Vicki Nivens.

WITNESSETH:

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

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

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

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

WHEREAS, BHE is under contract to purchase certain land in the City of Burleson, Johnson County, Texas located at 220 N. Burleson Blvd., Burleson, Texas, and BHE 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 Property is not owned or leased by any member of the Burleson City Council or any member of the City Planning and Zoning Commission.

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

**ARTICLE 1.
AUTHORIZATION**

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

**ARTICLE 2.
DEFINITIONS**

- 2.01 The terms "Agreement," "Effective Date," "City," "BHE," and "Program," shall have the meanings provided, above.
- 2.02 "Capital Investment" means and shall include all costs incurred relating to the improvement of the Property, including the purchase price of the building and actual construction costs of all buildings, structures, infrastructure, utilities, landscaping and other onsite improvements, including all labor and materials. Capital investment also includes offsite improvements, including but not limited to the addition of parking spaces, sidewalk(s), utility relocations, and alley installation within the right-of-way of the City of Burleson.
- 2.03 "Development" means the construction of a Restaurant and related landscaping and onsite infrastructure on the Property.
- 2.04 "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. If the City, at its discretion ever elects to, or the voters choose to, reallocate the Sales Tax and to levy less than a one percent (1%) sales tax, then "Available Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual Sales Tax levied on gross taxable sales at the Restaurant. Should the voters or the City set the Sales Tax rate at more than one percent (1%), the Available Sales Tax will not exceed one percent (1%).
- 2.05 "Grant Payment(s)" means the periodic payments of a percentage of Available Sales Taxes as provided herein.
- 2.06 "Grant Payment Cap" has the meaning set forth in Section 5.02 of this Agreement.
- 2.07 "Opening Date" means that date on which BHE opens the Restaurant.
- 2.08 "Property" means Lot X, Block X of the Burleson Addition located at 220 N. Burleson Blvd., Burleson, Texas.
- 2.09 "Restaurant" means a Hard Eight Barbeque restaurant comprised of at least 12,000 square feet located on the Property.

- 2.10 "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%). 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.

ARTICLE 3.
TERM

- 3.01 The term of this Agreement shall commence on the Effective Date and will terminate on December 31, 2028.

ARTICLE 4.
COVENANTS OF BHE

- 4.01 Covenants Regarding BHE Development and Operations. In consideration of City agreeing to pay BHE the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, BHE agrees to the following, which are not obligations of BHE, but are duties that must be fulfilled in order to receive Grant Payments:
- (A) Design, construct and operate the Development in conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws, subject to the approval of the Burleson Old Town Design Standards Board. Notwithstanding the foregoing, City acknowledges it has pre-approved BHE's construction and use of an outdoor, open pit barbecue by letter dated September 1, 2017.
 - (B) Complete the closing on the Property by December 31, 2017.
 - (C) Commence construction of the Development no later than March 1, 2018, with the Opening Date for the Restaurant no later than January 1, 2019, subject to Article 10 of this Agreement
 - (D) BHE shall be solely responsible for the design and construction of the Development and shall comply with all building codes and ordinances of the City applicable to the Development.
 - (E) After the Opening Date, BHE 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.

ARTICLE 5.
PROGRAM GRANT

- 5.01 Subject to BHE complying with his duties and obligations under this Agreement, the City agrees that, subject to the terms and conditions contained herein, BHE 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 BHE over the term of this Agreement shall not exceed four hundred and fifty thousand (\$450,000) unless, in any given calendar year prior to the cap being reached or the term expiring, the Available Sales Taxes received by the City for such Calendar Year from the Property exceeds one-hundred-thousand dollars (\$100,000) in which case the Grant Payment cap will be raised to five hundred and fifty thousand dollars (\$550,000).
- 5.03 The City shall make Grant Payments to BHE in annual installments equal to 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 twelve (12) month period ending December 31, 2028; 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, BHE 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 BHE shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement. City shall not be required to pay BHE the Grant Payments under this Article until such time that BHE 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 BHE 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.
AUTHORITY; COMPLIANCE WITH LAW

- 6.01 BHE 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 BHE and this Agreement constitutes the legal, valid and binding obligation of BHE, and is enforceable in accordance with its terms and provisions.
- 6.02 Notwithstanding any other provision of this Agreement, BHE shall comply with all federal, state, and local laws.
- 6.03 During the term of this Agreement, BHE agrees not to knowingly employ any undocumented workers at the Restaurant, and if convicted of a violation under 8 U.S.C. Section 1324a(f), BHE shall repay the amount of the Grant Payments received by BHE as of the date of such violation within 120 business days after the date BHE 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 BHE's violation of this section.

ARTICLE 7.
DEFAULT AND REMEDIES

- 7.01 Default by BHE.
- (A) In the event: (i) BHE fails to fulfill its obligations under Article 4 of this Agreement; (ii) BHE has delinquent ad valorem or sales taxes owed to the City provided that BHE retains the right to timely and properly protest and/or contest any such taxes; or (iii) BHE materially breaches any of the material terms and conditions of this Agreement, then BHE 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 BHE written notice of such breach and/or default, and if BHE 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 BHE, and the City shall have no further obligation to BHE.
- (B) In the event BHE fails to comply with Section 4.01 and closes or ceases operation prior to the end of the Term of this Agreement, BHE shall not be entitled to any additional payments from City.
- 7.02 No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City Council of Burleson.

ARTICLE 8.
RIGHT OF OFFSET

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

ARTICLE 9.
VENUE AND GOVERNING LAW

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

ARTICLE 10.
FORCE MAJEURE

Performance of BHE's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and BHE'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), oil and gas related activity affecting the Property, governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

ARTICLE 11.
GIFT TO PUBLIC SERVANT OR TO BHE REPRESENTATIVE

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

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

ARTICLE 12.
ASSIGNMENT

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

ARTICLE 13.
INDEMNIFICATION

- 13.01 **BHE 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 OTB 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 BHE and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.
- 13.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City (including its past, present and future officers, elected officials, directors, employees and agents of the City) does not assume any responsibility to any third party in connection with BHE's construction of the Development.

ARTICLE 14.
MISCELLANEOUS MATTERS

- 14.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

- 14.02 Agreement Subject to Law. This Agreement is made subject in accordance with the Burleson Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws.
- 14.03 Interpretation. Each of the Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.
- 14.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 14.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 14.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.
- 14.07 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

BHE: Burleson Hard Eight, LLC
2441 E. US HWY 377
Suite 104
Granbury, Texas 76049
Attn: Vicki Nivens, President

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

With a copy to:

City Attorney
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place
Suite 200
Fort Worth, Texas 76107

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

14.09 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

[Signature pages to follow]

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

APPROVED AS TO FORM AND LEGALITY:

Fred Guast
City Attorney

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

By: *KS*

Name: KEN SHETTER

Title: Mayor

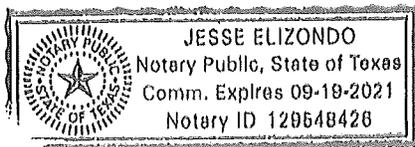
Date: 11/13/17

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on 13th of Nov, 2017 by KEN SHETTER, known personally by me to be the Mayor of the City of Burleson, on behalf of said City.

[Notary Seal]

JESSE ELIZONDO
Notary Public, State of Texas
Exp 9/19/21



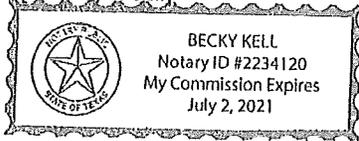
Burleson Hard Eight, LLC
A Texas Limited Liability Corporation

By: Vicki Nivens
Name: Vicki Nivens
Title: President
Date: 11-1-17

STATE OF TEXAS
COUNTY OF Wood

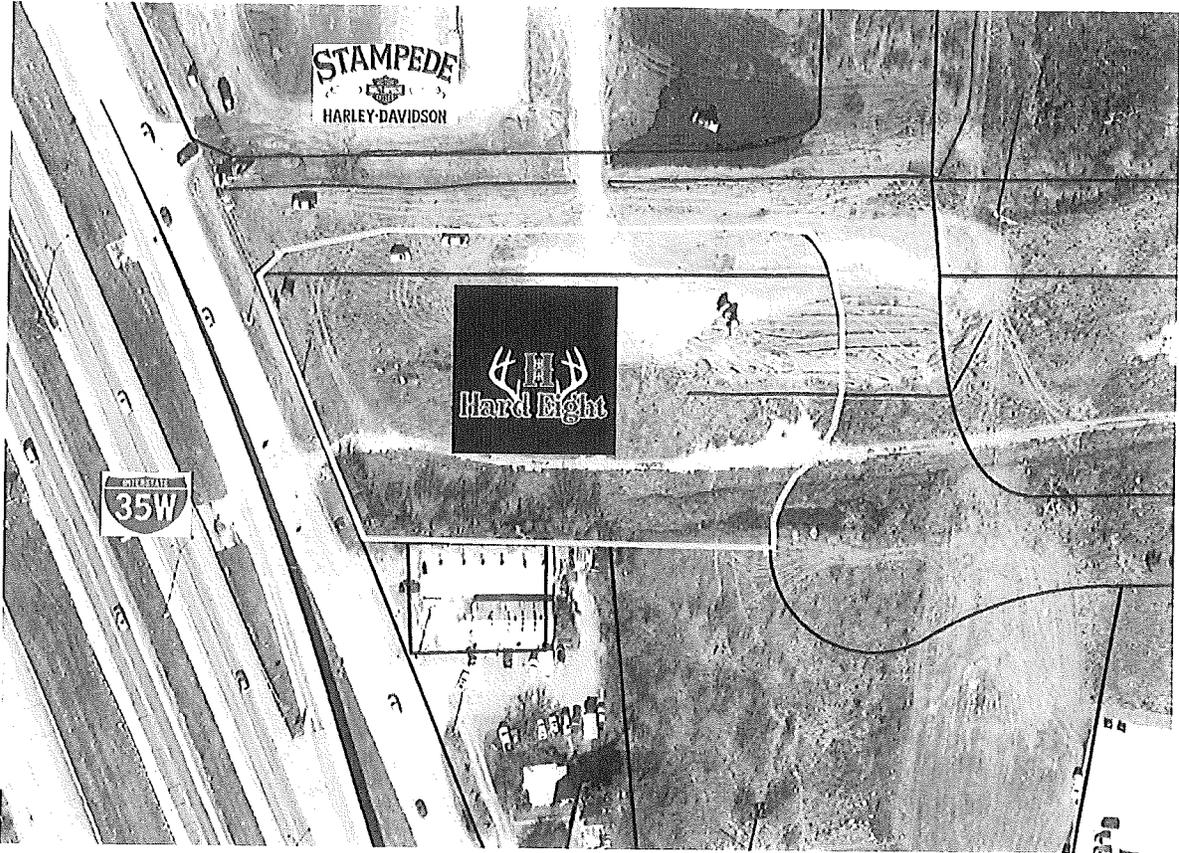
This instrument was acknowledged before me on November 1, 2017 by Vicki Nivens, known personally by me to be the President of Burleson Hard Eight, LLC, on behalf of said company.

[Notary Seal]



Becky Kell
Notary Public, State of Texas

Exhibit A
Legal Description of Land



Hard Eight BBQ
2441 E. US Hwy 377, Suite 104
Granbury, TX 76049
(817) 579-9770

September 1, 2017

Mr. Alex Philips
Economic Development Manager
City of Burleson
141 W Renfro Street
Burleson, TX 76028

Re: *Hard Eight BBQ restaurant project in the City of Burleson, Texas*

Dear Alex:

This letter shall serve to confirm that Hard Eight BBQ has advised the City of Burleson (the "City") that, as an integral component of its operation of the Burleson Hard Eight BBQ restaurant ("Hard Eight"), it will be constructing an outdoor, open pit barbecue (the "Pit"), which will not be screened. Once operational, the Pit will generate and produce smoke as the by-product of burning mesquite, oak and other hardwoods necessary to the barbecue process. The Pit will be similar in nature to the barbecue pit at the Hard Eight BBQ Restaurants located in the cities of Stephenville, Coppel, Roanoke, and The Colony, Texas, and the smoke production will be similar as well.

The City affirms that, by and through its staff, City Manager, City Fire Marshal, City Health Inspector and City Council, it has had an occasion to observe the pit at one or more of the Hard Eight BBQ Restaurants. This letter shall further serve as confirmation by the City that the use of the Pit by Hard Eight, is not in any way inconsistent with or violative of any existing ordinances or other laws applicable within the corporate limits of the City.

The City understands that Hard Eight's restaurant operation is dependent upon the use of its Pit, and Hard Eight, in making its determination to purchase real property in Burleson, and to construct a new restaurant on said property, is relying on the City's representation that the use of said Pit within the corporate limits of the City is permissible. The representations contained in this letter of agreement shall survive Hard Eight's purchase of real property in the City and shall not be superceded by any other agreements entered into by and between the City and Hard Eight.

Very truly yours,

By Big Boy, Inc. (and affiliated Hard Eight entities)

By: *Vicki Nivens*
VICKI NIVENS, its President

ACKNOWLEDGED AND AGREED:
City of Burleson

By: *Alex Philips*
Alex Philips, its EDC Manager