

**FIRST AMENDMENT TO THE
CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE
AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON 4A
ECONOMIC DEVELOPMENT CORPORATION, THE BURLESON COMMUNITY
SERVICE DEVELOPMENT CORPORATION, AND AC BURLESON, LLC**

This First Amendment to the Chapter 380 Economic Development and Performance Agreement (the "Amendment") is made and entered into on this 6th day of February, 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 4A Economic Development Corporation ("EDC"), a Texas municipal development corporation located in the City, by and through its Board President, the Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and AC Burleson, LLC ("Alley Cats"), a Texas limited liability company, acting by and through its manager. City, EDC, BCSDC, and Alley Cats are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, on or about December 13, 2021, the City, the EDC, BCSDC and Alley Cats entered into that certain Chapter 380 Economic Development and Performance Agreement (the "Agreement" as attached hereto as Exhibit A); 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. Section 4.01 "Covenants Regarding Alley Cats Development and Operations" of the Agreement is hereby amended and replaced to read as follows:

"4.01 Covenants Regarding Alley Cats Development and Operations. In consideration of City agreeing to pay Alley Cats the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Alley Cats agrees to the following, which are not obligations of Alley Cats, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:

- (A) 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.
- (B) 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) Design and construct the Development to include the following amenities:
 - D.01 Bowling Lanes;
 - D.02 Secondary Bowling Lanes for corporate and other events, including parties;
 - D.03 Arcade;
 - D.04 Laser Tag;
 - D.05 Miniature Golf;
 - D.06 Batting Cages;
 - D.07 Go-Karts; and
 - D.08 Meeting Room with a seated capacity of at least 100 people.
- (E) Design and construct the Development to include an entrance to the Corporate Headquarters that is marked and signed as the corporate headquarters of Alley Cats and that is separate and distinct from the entrance to the Family Entertainment Center.
- (F) If Alley Cats does not own fee simple title to the Property as of the Effective Date, enter into a real estate contract to purchase fee simple title to the Property by December 31, 2021.
- (G) Complete a pre-development meeting with the City by December 31, 2021.
- (H) Complete platting and zoning approval by the City Council by April 30, 2022.
- (I) If Alley Cats does not own fee simple title to the Property as of the Effective Date, purchase and acquire fee simple title to the Property by June 30, 2022.
- (J) Commence construction of the Development no later than July 31, 2022.
- (K) Complete construction of the Development no later than **August 1, 2024**.
- (L) Make a minimum Capital Investment of no less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in the Property no later than **August 1, 2024**.
- (M) Relocate the Alley Cats corporate headquarters to the Corporate Headquarters no later than **August 1, 2024**.

- (N) Opening Date for the Family Entertainment Center and Corporate Headquarters no later than **August 1, 2024**.
- (O) After the Opening Date, operate the Family Entertainment Center and Corporate Headquarters 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) consecutive days, in each event, subject to extensions for force majeure.
- (P) Alley Cats 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 as set forth herein.”

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.

[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

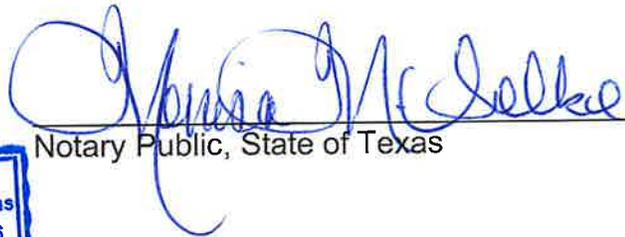
By: 
Bryan Langley, City Manager

Date: 2/6/23

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on Feb. 10, 2023 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 4A ECONOMIC DEVELOPMENT CORPORATION

By: *[Signature]*

Name: Dan McClendon
Title: Board President

Date: February 10, 2023

STATE OF TEXAS
COUNTY OF Johnson

This instrument was acknowledged before me on Feb 10, 2023 by Dan McClendon, known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

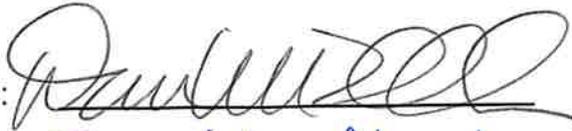
[Signature]

Notary Public, State

of Texas



**BURLESON COMMUNITY SERVICES
ECONOMIC DEVELOPMENT CORPORATION**

By: 

Name: Dan McClellan
Title: Board President

Date: February 6, 2023

STATE OF TEXAS
COUNTY OF Johnson

This instrument was acknowledged before me on Feb. 6, 2023 by Dan McClellan known personally by me to be the Board President of the Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]




Notary Public, State of Texas

AC BURLESON, LLC

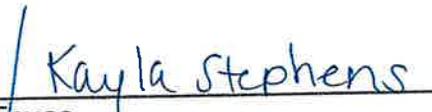
By: 
Brian K. Smith, Manager

Date: 1-26-2023

STATE OF TEXAS
COUNTY OF Tarrant

This instrument was acknowledged before me on Jan 26, 2023 by Brian K. Smith, known personally by me to be the Manager of AC Burieson, LLC, on behalf of said entity.

[Notary Seal]

 / 
Notary Public, State of Texas



**CHAPTER 380 AND ECONOMIC DEVELOPMENT AND PERFORMANCE
AGREEMENT BETWEEN THE CITY OF BURLESON, THE BURLESON 4A
ECONOMIC DEVELOPMENT CORPORATION, THE BURLESON COMMUNITY
SERVICE DEVELOPMENT CORPORATION, AND AC BURLESON, LLC**

This Chapter 380 Economic Development and Performance Agreement (the "Agreement") is entered into as of December 13, 2021 (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 4A Economic Development Corporation ("EDC"), a Texas municipal development corporation located in the City, by and through its Board President, the Burleson Community Service Development Corporation ("BCSDC") acting by and through its Board President, and AC Burleson, LLC ("Alley Cats"), a Texas limited liability company, acting by and through its manager. City, EDC, BCSDC, and Alley Cats are sometimes hereafter referred to individually as a "Party" and collectively as the "Parties."

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, Alley Cats 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 Alley Cats'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, Alley Cats owns or has under contract to purchase and own certain real property in the City of Burleson, Johnson County, Texas, commonly known as 1258 SW Alsbury, Burleson, Texas, and more particularly described in Exhibit "A", attached hereto and incorporated herein by reference for all purposes (the "Property"); and

WHEREAS, Alley Cats proposes to operate a regional or national commercial headquarters and a family entertainment center on the Property; and

WHEREAS, the City has found the Development (hereinafter defined) will contribute to an increase in economic development in the City; and

WHEREAS, the EDC has determined and found that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.101, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or targeted infrastructure and improvements that are for the creation or retention of primary jobs for regional or national corporate headquarters facilities; 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 501.101, in that the expenditures fund the provision of land, buildings, equipment, facilities, expenditures, or targeted infrastructure and improvements that are for the creation or retention of primary jobs for regional or national corporate headquarters facilities; and

WHEREAS, the BCSDC has further 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 fund the provision of land, buildings, equipment, facilities, expenditures, or improvements that are required or suitable for use for athletic, entertainment, and tourist purposes; 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 Alley Cats performance of its obligations herein will revitalize the John Jones corridor 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, 504, and 505 of the Texas Local Government Code.

ARTICLE 2.
DEFINITIONS

- 2.01 The terms "Agreement," "Alley Cats," "BCSDC," "City," "EDC," "Effective Date," "Party," "Parties," "Program," and "Property," shall have the meanings provided, above.
- 2.02 "Affiliate" means any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Alley Cats.
- 2.03 "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 Family Entertainment Center during each calendar year or portion thereof during the Term of this Agreement.
- 2.04 "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, and shall include any third party funds borrowed by Alley Cats in furtherance thereof.
- 2.05 "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%).
- 2.06 "Concept Plan" means the plan depicted on **Exhibit "B"**.
- 2.07 "Corporate Headquarters" means the national corporate headquarters of Alley Cats, comprised of approximately 2,000 square feet and located on the Property.
- 2.08 "Development" means the construction of the Corporate Headquarters and Family Entertainment Center and related landscaping and onsite infrastructure on the Property.
- 2.09 "Event of Bankruptcy" means the dissolution or termination of Alley Cat's existence as a going business, insolvency, appointment of receiver for any part of Alley Cat's property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Alley Cats and such proceeding is not dismissed within 90 days after the filing thereof.

- 2.10 "Family Entertainment Center" means an Alley Cats operated and branded facility comprised of approximately 50,000 square feet located on the Property operated in a manner substantially similar to the Alley Cats Entertainment located at 609 NE Loop 820 Hurst, Texas, that includes the following amenities: (1) bowling lanes; (2) secondary bowling lanes for corporate and other events including parties; (3) arcade; (4) laser tag; (5) miniature golf; (6) batting cages; (7) go-karts; and (8) a meeting room with a seated capacity of at least 100 people.
- 2.11 "Grant Payment(s)" means the periodic payments of a percentage of Available Sales Taxes as provided herein.
- 2.12 "Grant Payment Cap" has the meaning set forth in Section 5.02 of this Agreement.
- 2.13 "Incentives" mean the combined contributions, monetary or otherwise, of the City, EDC, and BCSDC towards completion of the Development, as required by this Agreement.
- 2.14 "Opening Date" means that date on which Alley Cats opens both the Family Entertainment Center and Corporate Headquarters.
- 2.15 "Sales Tax" shall mean the combination of the City Sales Tax, Type A Sales Tax, and Type B Sales Tax, the combination of which is currently established at two percent (2.0%).
- 2.16 "Type A 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 4A Economic Development Corporation, a Type A economic development corporation, operating pursuant to Chapter 504 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 A Sales Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Type A Sales Taxes" shall mean the amount of sales taxes actually received by the City of Burleson arising from the actual Type A Sales Tax levied on gross taxable sales. Should the voters or the City set the Type A Sales Tax rate at more than one-half of one percent (0.5%), the Type A Sales Tax will not exceed one-half of one percent (0.5%).
- 2.17 "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 Alley Cats receives a Certificate of Occupancy on the Property.

ARTICLE 4.
COVENANTS OF ALLEY CATS

4.01 Covenants Regarding Alley Cats Development and Operations. In consideration of City agreeing to pay Alley Cats the Grant Payments in accordance with the terms, provisions and conditions of this Agreement, Alley Cats agrees to the following, which are not obligations of Alley Cats, but are duties that must be fulfilled in order to receive Grant Payments and Incentives:

- (A) 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.
- (B) 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) Design and construct the Development to include the following amenities:
 - D.01 Bowling Lanes;
 - D.02 Secondary Bowling Lanes for corporate and other events, including parties;
 - D.03 Arcade;
 - D.04 Laser Tag;
 - D.05 Miniature Golf;
 - D.06 Batting Cages;
 - D.07 Go-Karts; and

D.08 Meeting Room with a seated capacity of at least 100 people.

- (E) Design and construct the Development to include an entrance to the Corporate Headquarters that is marked and signed as the corporate headquarters of Alley Cats and that is separate and distinct from the entrance to the Family Entertainment Center.
- (F) If Alley Cats does not own fee simple title to the Property as of the Effective Date, enter into a real estate contract to purchase fee simple title to the Property by December 31, 2021.
- (G) Complete a pre-development meeting with the City by December 31, 2021.
- (H) Complete platting and zoning approval by the City Council by April 30, 2022.
- (I) If Alley Cats does not own fee simple title to the Property as of the Effective Date, purchase and acquire fee simple title to the Property by June 30, 2022.
- (J) Commence construction of the Development no later than July 31, 2022.
- (K) Complete construction of the Development no later than August 1, 2023.
- (L) Make a minimum Capital Investment of no less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in the Property no later than August 1, 2023.
- (M) Relocate the Alley Cats corporate headquarters to the Corporate Headquarters no later than August 1, 2023.
- (N) Opening Date for the Family Entertainment Center and Corporate Headquarters no later than August 1, 2023.
- (O) After the Opening Date, operate the Family Entertainment Center and Corporate Headquarters 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) consecutive days, in each event, subject to extensions for force majeure.
- (P) Alley Cats 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 as set forth herein.

4.02 Verification of Capital Investment. Within 45 days following the receipt of a Certificate of Occupancy for the Development, Alley Cats shall provide written verification to the City that the Capital Investment made by Alley Cats meets or exceeds the requirements set forth in this Agreement. Alley Cats agrees that City shall not be required to make any Grant Payments under this Agreement until such

time that Alley Cats provides such written verification. The City may request, and Alley Cats hereby agrees that it will permit reasonable review of information that permits the City to verify that the Capital Investment made by Alley Cats for the Development meets or exceeds the requirements of this Agreement.

ARTICLE 5.
PROGRAM GRANT

- 5.01 Subject to Alley Cats complying with his duties and obligations under this Agreement, the City agrees that, subject to the terms and conditions contained herein, Alley Cats 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 Alley Cats over the term of this Agreement shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00).
- 5.03 The City shall make Grant Payments to Alley Cats in annual installments equal to one hundred percent (100%) of Available Sales Taxes received by the City for the prior calendar year of the Family Entertainment Center'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 five years following the date Alley Cats 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, Alley Cats 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 Alley Cats shall rely on the Sales Tax Disclosure as accurate and definitive for purposes of this Agreement. City shall not be required to pay Alley Cats the Grant Payments under this Article until such time that Alley Cats 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 Alley Cats 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 Alley Cats complying with its duties and obligations under this Agreement, the City agrees to the following Incentives: The City shall reimburse to Alley Cats a total amount not to exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) for expenses related to the Corporate Headquarters. The Incentives shall be paid in the incremental, scheduled amounts specified below upon completion of the following Development construction milestones:
- (A) Upon closing on the real estate contract and obtaining fee simple title to the Property, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
 - (B) Upon receiving a building permit for construction of the Development, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
 - (C) Upon completion of the construction of the entrance to the Corporate Headquarters, the Incentive due to Alley Cats shall be One Hundred Fifty-Six Thousand Two Hundred and Fifty Dollars (\$156,250);
 - (D) Upon completion of the construction of the meeting room with a seated occupancy of 100, the Incentive due to Alley Cats shall be Two Hundred Eight Thousand Three Hundred Thirty-Three Dollars (\$208,333);
 - (E) Upon completion of all public improvement infrastructure for the Development (and such public improvement infrastructure is accepted by the City, in its reasonable discretion), the Incentive due to Alley Cats shall be Two Hundred Eight Thousand Three Hundred Thirty-Three Dollars (\$208,333); and
 - (F) Upon receipt of a certificate of occupancy for both the Corporate Headquarters and Family Entertainment Center, the Incentive due to Alley Cats shall be Three Hundred Sixty-Four Thousand Five Hundred Eighty-Four Dollars (\$364,584).
- 6.02 The BCSDC authorizes the expenditure of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) for the Incentives. The BCSDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.
- 6.03 The EDC authorizes the expenditure of up to Six Hundred Twenty-Five Thousand Dollars (\$625,000.00) for the Incentives. The EDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the City obligations set forth in this Agreement.
- 6.04 Verification of Completion of the Development. Following the completion of each Development construction milestone specified in Section 6.01, Alley Cats shall provide written notice of such completion to the City and provide proof of costs reasonably satisfactory to the City. Alley Cats agrees that City shall not be required to make any Incentive payment under this Agreement until such time that Alley Cats provides such written notice and proof of costs. The City may request, and

Alley Cats hereby agrees that it will permit reasonable review of information that permits the City to verify that the costs made by Alley Cats for the Development meets or exceeds the requirements of this Agreement. Additionally, the City may request, and Alley Cats hereby agrees that it will permit reasonable inspection of the Property during normal business hours that permits the City to verify that the improvements made by Alley Cats for the Development meet or exceed the requirements of this Agreement. Following written notice of completion and proof of costs reasonably satisfactory to the City, City shall pay Alley Cats the Incentive amount specified in Section 6.01(A)-(F), as applicable, subject to the terms and provisions of this Agreement, within 60 days.

ARTICLE 7.

REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS

The parties hereto find that the Property 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, Alley Cats 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, Alley Cats 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) Alley Cats'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 Alley Cats 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 Alley Cats 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 Alley Cats and this Agreement constitutes the legal, valid and binding obligation of Alley Cats, and is enforceable in accordance with its terms and provisions, except as enforcement may be stayed or limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

- 8.02 Notwithstanding any other provision of this Agreement, Alley Cats shall comply with all federal, state, and local laws.
- 8.03 During the term of this Agreement, Alley Cats 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), Alley Cats shall repay the amount of the Incentives received by Alley Cats as of the date of such violation within 120 business days after the date Alley Cats 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 Alley Cats's violation of this Article.

ARTICLE 9. **DEFAULT AND REMEDIES**

9.01 Default by Alley Cats.

- (A) It shall be a default of this Agreement if: (i) Alley Cats fails to fulfill its obligations under Article 4 of this Agreement; (ii) Alley Cats has delinquent ad valorem or sales taxes owed to the City provided that Alley Cats retains the right to timely protest and/or contest any such taxes; (iii) Alley Cats materially breaches any of the material terms and conditions of this Agreement after the expiration of the notice and cure periods described herein, or (iv) Alley Cats experiences an Event of Bankruptcy. In the event of such a default, City shall give Alley Cats written notice of such breach and/or default, and if Alley Cats 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 Alley Cats, and the City shall have no further obligation to Alley Cats.
- (B) In the event Alley Cats fails to comply with Section 4.01 and closes or ceases operation prior to the end of the Term of this Agreement, Alley Cats 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 Corporate Headquarters and Family Entertainment Center within eight (8) years from the Opening Date or if Alley Cats does not open the Corporate Headquarters and Family Entertainment Center within three (3) years from the Effective Date of this Agreement, subject to extensions for force majeure, Alley Cats shall reimburse the City an amount equal to the total amount of the Incentive paid pursuant Section 6.01 less -\$156,250.00 for every full year Alley Cats remained on the Property in accordance this Agreement.

ARTICLE 10.
RIGHT OF OFFSET

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

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 Alley Cats's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Alley Cats'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, disease, endemic and/or pandemic (including any governmental measures taken in response thereto), 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 ALLEY CATS 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 Alley Cats as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 14.

ASSIGNMENT

Alley Cats may not assign any part of this Agreement without consent or approval by the City Council. Alley Cats may assign this Agreement to an Affiliate of Alley Cats for the purpose of owning the Property upon the consent and approval by City Council, which consent shall not be unreasonably withheld, conditioned or delayed, provided that (i) Alley Cats or an Affiliate shall continue to occupy the Development as an owner or tenant of the Property, and (ii) the assignee assumes all of Alley Cats's obligations under this Agreement.

ARTICLE 15.

INDEMNIFICATION

- 15.01 **ALLEY CATS 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, OUT-OF-POCKET COSTS, AND OUT-OF-POCKET EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (COLLECTIVELY, "LOSSES"), 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 ALLEY CATS OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS CONTRACT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ALLEY CATS BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 15.01 EXTEND TO, ANY LOSSES ARISING OUT OF OR OCCASIONED BY THE ACTS OR OMISSIONS OF THE CITY, ITS OFFICERS AND EMPLOYEES, THAT CONSTITUTE GROSS**

NEGLIGENCE OR WILLFUL MISCONDUCT. 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 Alley Cats 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 Alley Cats'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 Burluson 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.

Alley Cats: AC Burleson, LLC
Attn: Brian Smith
P.O. Box 152465
Arlington, Texas 76015

With a copy to: Barlow Garsek & Simon, LLP
Attn: Amanda Myers
920 Foch Street
Fort Worth, Texas 76107

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

EDC: Burleson 4A Economic 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

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: 12/13/21

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on Dec. 13, 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]
Notary Public, State of Texas



BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

By: 

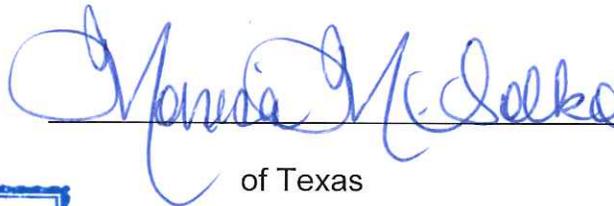
Name: Dan McClendon
Title: Board President

Date: December 13, 2021

STATE OF TEXAS
COUNTY OF Johnson

This instrument was acknowledged before me on Dec 13, 2021 by Dan McClendon, known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]



Notary Public, State

of Texas



BURLESON COMMUNITY SERVICE
DEVELOPMENT CORPORATION (4B)

By: *Dan McClendon*

Name: *Dan McClendon*
Title: Board President

Date: *December 13, 2021*

STATE OF TEXAS
COUNTY OF *Johnson*

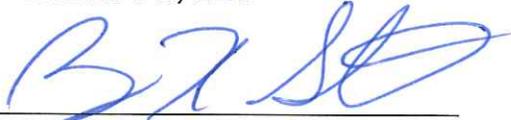
This instrument was acknowledged before me on *Dec. 13*, 2021 by *Dan McClendon*, known personally by me to be the Board President of the Burleson Community Services Development Corporation, on behalf of said entity.

[Notary Seal]

Monica M. Solko
Notary Public, State of Texas



AC BURLESON, LLC

By: 
Brian K. Smith, Manager

Date: 12-8-2021

STATE OF TEXAS
COUNTY OF Tarrant / Johnson

This instrument was acknowledged before me on 8 DECEMBER 20 21 by Brian K. Smith, known personally by me to be the Manager of AC Burleson, LLC, on behalf of said entity.

[Notary Seal]

 JESSE ELIZONDO
Notary Public, State of Texas

