



City of La Vernia
Municipal Development District
VIA VIRTUAL CONFERENCE
Meeting

February 25, 2021
5:30 P.M.

JOIN VIRTUAL:

<https://v.ringcentral.com/join/603078738>

Meeting ID: 603078738

USING TELEPHONE OR MOBILE DEVICE:

+1 (267) 9304000

Access Code / Meeting ID: 603078738

A recording of the conference will be made and will be available to the public in accordance with the Open Meetings Act.

AGENDA

1. Call to Order and Declare a Quorum.
2. Invocation, Pledge of Allegiance and Pledge of Texas Flag
(*Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible*)
3. Public Comments.
4. Consent Agenda
 - A. Minutes from the December 10th 2020 Meeting
5. Discuss and action on amending and assign the BFEF Agreement.
6. Discuss on 4th of July celebration in the park for 2021 to include entertainment, budget and cancellation.
7. Adjourn.

The Board of the La Vernia Municipal Development District reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Open Meetings Act, Texas Government Code 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberation about Security Devices), and 551.087 (Economic Development), and any other provision under Texas law that permits a governmental body to discuss a matter in a closed executive session.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the governing body of the above named La Vernia Municipal Development Board is a true and correct copy of said Notice on the bulletin boards, of the City Hall of said City of La Vernia, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted February 22, 2021 at 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Yvonne Griffin,

A handwritten signature in black ink that reads "Yvonne Griffin". The signature is fluid and cursive, with the first name being particularly prominent.

Executive Director



MDD Agenda Item

Meeting Date:

Presentation

Discussion

Discussion/Action

Ordinance

Resolution

Other: _____

AGENDA ITEM:

Approval of a transfer of agreement for Dollar Tree

DISCUSSION:

The MDD approved a Economic Development Agreement on 9-24-2019 with Kevin Brown for the Dollar Tree. Dollar Tree was sold to Elite Realty Group on February 4th. The original agreement allows for amendment by mutual written agreement of the parties, as approved by the governing bodies. The total agreement was for \$25,000, paid annual, with a current balance of \$15,000

BUDGET IMPACT:

None

STAFF RECOMMENDATION:

Approve amendment to agreement be transferred from BFEF to Elite Realty Group LLC

Attachments

New owners' information per email
Amendment to agreement
Original Agreement date 9-24-2019

Kevin D. Brown, CPA
President
Abrego Development Company, LP
P O Box 130
La Vernia, TX 78121
Office 830-216-2300
Cell 210-413-1185
www.sanantoniocountry.com

-----Original Message-----

From: Patrick Hammond <phammond@fortisnetlease.com>

To: kdbrown767@aol.com

Sent: Tue, Dec 29, 2020 11:35 am

Subject: Estoppel/SNDA

Kevin,

Below is the information for Estoppel/SNDA. Please send into Dollar Tree ASAP.

Purchasing entity is:

Elite Realty Group LLC
435 Conti Lane
Victoria TX 77904

Lender is:

International Bank of Commerce
311 N Virginia
Port Lavaca TX 77979

Contact person is:

Derek Schmidt
President and CEO
361-552-9771
DerekSchmidt@ibc.com

Best Regards,

Patrick Hammond
Senior Director
Office: 248.419.3808
Mobile: 810.624.1990
Fax: 248.419.3496
phammond@fortisnetlease.com
NEW WEBSITE: www.fortisnetlease.com

Fortis Net Lease has successfully sold more than \$6.0 billion worth of investment real estate.

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**AMENDMENT OF ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF LA VERNIA MUNICIPAL DEVELOPMENT
DISTRICT AND BFEF PROPERTIES LLC**

THE STATE OF TEXAS §
 §
COUNTY OF WILSON §

ASSIGNMENT OF AGREEMENT:

WHEREAS, BFEF PROPERTIES, LLC, a Texas Limited Liability Company, (the “COMPANY”), and the La Vernia Municipal Development District, a political subdivision of the State of Texas and City of La Vernia (the “DISTRICT”) entered into that certain Economic Development Agreement (the “Agreement”) on September 24, 2019, attached hereto and incorporated herewith for all purposes in Exhibit A, for that certain project identified therein. The COMPANY and DISTRICT may be referred to jointly herein as the “Parties and individually as a “Party”.

WHEREAS, COMPANY has indicated to DISTRICT that it has conveyed its interest in the project to Elite Realty Group, LLC (NEW COMPANY) and now desires to assign its interest in that Agreement to the NEW COMPANY (also referred to herein as “Party” or “Parties”); and

WHEREAS, DISTRICT is agreeable to allow COMPANY to assign the Agreement and it is in the best interest of the DISTRICT and COMPANY to allow the project to be completed; and

WHEREAS, pursuant to Article 10, Section 10, the Agreement allows for amendment by mutual written agreement of the Parties, as approved by the governing bodies of the DISTRICT and the City of La Vernia, Texas.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements herein set forth, and other good and valuable consideration, the Parties hereto agree as follows:

1. COMPANY does hereby assign and transfer the Agreement to NEW COMPANY, its successors and assigns, all of COMPANY’s rights, title, interest, liabilities, obligations, and duties arising under the Agreement.
2. As part of the consideration of this Amendment, NEW COMPANY expressly assumes all liabilities, obligations, and duties of COMPANY related to the Agreement. It is acknowledged and agreed that COMPANY shall not be

responsible for the discharge or performance of any duties or obligations to be performed or discharged in connection with the Agreement at and after the Effective Date of this Amendment. By acceptance of this Amendment, NEW COMPANY, to the extent permitted by law, agrees to indemnify, save and hold harmless DISTRICT from and against any and all loss, liability, claims or causes of action existing in favor of or asserted by any person or entity arising out of or relating to COMPANY's failure to perform any duties or obligations set forth in the Agreement.

3. *Severability.* The terms, conditions, and provisions of this Amendment are severable, and if any provision of this Amendment shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
4. *Headings; "Includes".* Paragraph headings are for convenience only and shall not be used in interpretation of this Amendment. For purposes of this Amendment, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.
5. *Binding Agreement; No Third Party Beneficiaries.* This Amendment shall be binding on and inure to the benefit of the Parties, their respective permitted successors and permitted assigns. This Amendment and all of its provisions are solely for the benefit of the Parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.
6. *Counterparts.* This Amendment may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by all Parties.
7. *Amendment.* This Amendment is intended to supplement and add to the original Agreement regarding the matters set forth herein and shall be incorporated as if fully set forth therein. This Amendment in conjunction with the Agreement shall be construed as the entire Agreement and supersedes all prior negotiations, representations, and/or agreements, either written or oral. Any additional or future amendment or modification of the Agreement shall be in writing and signed by authorized representatives of each Party or it shall have no effect and shall be void.
8. *Authorized Persons.* The undersigned representatives of the Parties hereto are the properly authorized persons and have the necessary authority to execute this Amendment on behalf of the respective Parties hereto.

SIGNED by the Parties on the dates set forth below, and this Agreement shall be effective as of February __, 2021 (Effective Date).

COMPANY:

BFEF PROPERTIES, LLC

By: _____
Kevin D. Brown, Manager
Date: _____

Attest:

_____, Secretary

State of Texas §
 §
County of _____ §

This instrument was acknowledged before me on the ___ day of _____ 2021 by Kevin D. Brown, Manager of BFEF Properties, LLC, a Texas limited liability corporation, on behalf of said limited liability corporation.

NEW COMPANY:

ELITE REALTY GROUP, LLC

By: _____
Robert Barnwell, President and CEO
Date: _____

Attest:

_____, Secretary

State of Texas §
 §
County of _____ §

This instrument was acknowledged before me on the ___ day of _____
2021 by Robert Barnwell, President and CEO of Elite Realty Group, LLC, a Texas
limited liability corporation, on behalf of said limited liability corporation.

DISTRICT:

LA VERNIA MUNICIPAL DEVELOPMENT DISTRICT

By: _____
_____, President
Date: _____

Attest:

_____, Secretary

State of Texas §
 §
County of Wilson §

This instrument was acknowledged before me on the ___ day of _____
2021 by _____, President of La Vernia Municipal Development
District, a political subdivision of the State of Texas, on behalf of said political
subdivision.

AFTER RECORDING, MAIL TO:

EXHIBIT A
ECONOMIC DEVELOPMENT AGREEMENT

CHAPTER 377
ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF LA VERNIA MUNICIPAL DEVELOPMENT
DISTRICT AND BFEF PROPERTIES LLC

This Chapter 377 Economic Development Agreement (this "Agreement") is entered into between BFEF Properties LLC, a Texas Limited Liability Company, (the "Company") and the La Vernia Municipal Development District, a political subdivision of the State of Texas and City of La Vernia (the "DISTRICT"). The Company and DISTRICT may be referred to jointly herein as "the Parties" and individually as a "Party".

RECITALS

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution, and Chapter 377 of the Texas Local Government Code ("Chapter 377"), the City created a municipal development district to provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, Company desires to promote new or expanded business development in the DISTRICT through the purchase, renovation and leasing of the property and improvements located 224 FM 1346 (the "Facility"), La Vernia, Wilson County Texas 78121; and

WHEREAS, upon the completion of improvements to the Facility, contemplated by this Agreement, Company shall lease the facility to a retail industry end user resulting in the creation of One full time and Ten part-time jobs.; and

WHEREAS, the location of the Company, as proposed, will contribute to the economic development of the City of La Vernia by creating new jobs and increased employment, promoting and developing expanded business enterprises, increased development, increased real property value and tax revenue for the City of La Vernia, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy;

WHEREAS, the DISTRICT desires to offer incentives to Company to enable Company to renovate the Facility pursuant to this Agreement in substantial conformity with the DISTRICT's economic development plan and the applicable statutes; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters

hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

ARTICLE I RECITALS

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. Authority.

(a) The DISTRICT's execution of this Agreement is authorized by Chapter 377 of the Texas Local Government Code and constitutes a valid and binding obligation of the DISTRICT. The DISTRICT acknowledges that Company is acting in reliance upon the DISTRICT's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Project, hereinafter established.

(b) The Company's execution of this Agreement is authorized by any necessary action by the governing body of the Company and constitutes a valid and binding obligation of the Company.

2. Term.

This Agreement will become enforceable upon the Effective Date and will terminate on the first to occur of:

(a) The expiration of the Grant Term;

(b) Upon actual receipt by Company of the DISTRICT's payment of the Maximum Grant Amount; or

(c) Upon termination as provided for herein, whichever occurs first (the "Term").

3. Purpose.

The purpose of this Agreement is to formalize the agreements between the Company and the DISTRICT for the grant of economic incentives associated with Company's Project. This Agreement specifically state the covenants, representations of the Parties, and the incentives associated with Company's commitment to abide by the terms of this Agreement, which has been approved by the bodies governing the DISTRICT and the Company as required by state law. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by Company may constitute a breach of the entire Agreement and terminate any further commitments by the DISTRICT unless an alternative penalty or remedy is provided for herein.

4. Administration of Agreement.

Upon the effective date, the DISTRICT may delegate the administration and oversight of this Agreement to the Executive Director of the DISTRICT. Any proposed amendments to the Agreement shall still require the approval of the governing body of the DISTRICT and City of La Vernia, Texas.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

Act of Default or Default means failure to timely, fully, and materially comply with one or more requirements, obligations, duties, terms, conditions or warranties, as stated in this Agreement. DISTRICT may accept substantial compliance in lieu of full compliance by written waiver of such Act of Default.

Certificate of Occupancy shall mean that final document issued by the City of La Vernia, Texas, entitled "Certificate of Occupancy ", indicating that all applicable codes, regulations, and ordinances enforced by the City of La Vernia, and have been unconditionally, fully, and completely complied with in all respects. A Certificate of Occupancy shall not include a certificate issued in error, mistake, or misrepresentation of facts, nor any temporary or conditional document authorizing temporary or conditional occupancy.

City of La Vernia or City means the governing municipal corporation that is legally authorized to control the area that is within the city limits of the City of La Vernia, and the area that is within the City and/or Wilson County, Texas.

Code means the La Vernia Code of Ordinances in effect as of the Effective Date.

Company means BFEF Properties LLC, a Texas Limited Liability Company, authorized to do business in the State of Texas.

Comptroller means the Texas Comptroller of Public Accounts.

Effective Date means the Effective Date described in Article IX.

“Facility” means the planned development improvements of the existing structure located on the Property as described in Article IV., Section 1 (entitled “Description of the Facility”).

“Force Majeure” means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, and lockouts.

“Full-Time Equivalent Employee” means an employee with a regular work schedule of at least 35 hours per week.

“Improvements constructed on or installed within the Facility” shall mean only those improvements for which a Certificate of Occupancy has been issued by the City building official.

Initial Completion means the date on which a Certificate of Occupancy is issued allowing Company's operation within the Project.

“Maximum Grant Amount” or *“Maximum Total Amount of Grant Payment”* means an amount not to exceed \$25,000.00.

Program means the economic development program established by the DISTRICT by Resolution, Order, or as contemplated within the Interlocal Agreement between the District and City of La Vernia for the administration on an economic development program for the City, as authorized by Chapter 377, *Texas Local Government Code*, to promote local economic development and stimulate business and commercial activity within the District.

Project means Company's planned redevelopment of the building located at 224 FM 1346, La Vernia, Wilson County, Texas 78121, and its occupation by a retail industry end user.

Property means that land, and improvements thereon, identified as Block 1, Lot 1_ of the Westover Subdivision, in the City of La Vernia, Wilson County, Texas, the precise legal description of which will be attached hereto as Exhibit "A" upon receipt by the Company.

“Grant Term” means the period beginning on the Effective Date and ending six (6) years thereafter.

“Value” means the aggregate assessed taxable real property and tangible personal property value, of the Facility as determined by the NCAD.

ARTICLE IV

1. **Description of the Facility.** The Facility currently consists of a permanent building that will be renovated and leased to a retail industry end user. In consideration for the Grant Payment authorized by this Agreement Company shall redevelop the Facility into a 9180 square foot retail store.
2. **Redevelopment and Construction.** The redevelopment and construction necessary to complete the Facility pursuant to this Agreement for lease to the end user is expected to require a capital investment by Company equal to or exceeding \$78,000.

ARTICLE V COMPANY'S OBLIGATIONS

1. **Local Vendors.** Company agrees to make good faith efforts to give preference and priority to suppliers of goods and services within the city of La Vernia except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business.
2. **Redevelopment.** On or before 08/29/2019, Company shall make real property improvements and capital investment of at least \$78,000.00 The improvements shall include the redevelopment of the Facility and other real property improvements and personal property additions, in accordance with, and as more fully described in, Article 4.
3. **Employees**
 - (a) **Full-Time Equivalent Employees.** Upon the date the Facility is Fully Developed, the Facility shall employ a minimum of One Full-Time Equivalent Employees, and shall continue to employ at least such number during the term of this Agreement.
 - (b) **Part-Time Equivalent Employees.** Upon the date the Facility is Fully Developed, the Facility shall employ a minimum of Ten Part-Time Equivalent Employees, and shall continue to employ at least such number during the term of this Agreement.
4. **Required Reporting**

Annual Reports. Beginning for calendar year 2019, Company shall deliver to DISTRICT the following reports by March 31, 2020 and on March 31 of each subsequent year of the Agreement:

- (a) Annual report documenting efforts to utilize City of La Vernia suppliers of goods and services.
 - (b) Annual reports stating:
 - (i) the development and construction of Real Property Improvements to the Facility during the prior year regardless of whether Facility has been completed as contemplated by Improvements constructed on or installed within the Facility;
 - (ii) actual costs investment by Company;
 - (iii) construction required to complete construction described in Article IV, including proposed completion date;
 - (iv) the amount of property taxes paid with regard to the Facility for the most currently available calendar year, including the amount of such taxes that constitute the Real Property Taxes and Personal Property Taxes.
 - (c) With the Annual report, Company shall provide an annual certification of full compliance with all requirements of this Agreement, including certification that all reports required by this Agreement have been submitted for the year certified.
6. The payment of all indebtedness and obligations incurred by Company in connection with the development and construction of the Facility and the operation of the Facility shall be solely the obligations of Company. DISTRICT shall not be obligated to pay any indebtedness or obligations of Company.
7. Company is obligated to make timely payment of Company-owned Real Property and Personal Property Taxes during the Term of this Agreement.
8. **Default.**
- (a) **Construction.** All Improvements constructed on or installed, including personal property, within the Facility required by Article III shall be completed by September 1, 2019, and failure to comply with this section shall cause the automatic termination of this Agreement without the need for any further action by DISTRICT; and, DISTRICT shall have no obligation to make any Grant Payments to Company. Enforcement of this section is subject to Force Majeure. In the event of unforeseeable third-party delays, which are not Force Majeure, and upon a reasonable showing by Company that it has in good faith commenced and is diligently pursuing the correction, removal or abatement of such delays by using commercially reasonable efforts, the DISTRICT Board may consent to and excuse any such delays.

(b) Full Time Employees & Part Time Employees. This section shall apply in any year that the number of Full-Time or Part-Time Equivalent Employees falls below the number required by Article V Section 3. The Grant Payments shall be prorated for each Year of the Agreement in which the Company fails to maintain the required number of Employees for that year determined as follows:

(i) **Full-Time Employees.** Starting 2020, each year the number of actual Full-Time Employees reported by Company shall be subtracted from the required number of Full-Time Employees and if the difference is a positive number the Maximum Grant Amount shall be reduced by multiplying the difference by \$500.00. As an example in reporting year 2022 if the difference between the reported Full-Time employees and required Full-Time employees is 3, the Maximum Grant Amount shall be reduced by \$1500.00.

(ii) **Part-Time Employees.** Starting 2020, each year the number of actual Part-Time Employees reported by Company shall be subtracted from the required number of Part-Time Employees and if the difference is a positive number the Maximum Grant Amount shall be reduced by multiplying the difference by \$100.00. As an example in reporting year 2022 if the difference between the reported Part-Time employees and required Part-Time employees is 5, the Maximum Grant Amount shall be reduced by \$500.00.

(c) Reports and Information. Company's failure to timely and substantially comply with the reporting requirements of this Article shall be a default; and, DISTRICT shall be under no obligation to make any Grant Payment until compliance with such reporting requirements.

ARTICLE VI **DISTRICT'S OBLIGATION**

- 1. Yearly Grant Payments.** Provided Company is in full compliance with the terms of this Agreement and is not in Default, Yearly Grant Payments of \$5,000.00 shall be made for the term of this Agreement or until the **Maximum Total Amount of Grant Payment** is achieved, whichever occurs first.
- 2. Source of Grant Payments.** Said Grant Payments shall be payable only from the DISTRICT's receipt of its portion of Sales Tax received from the Comptroller.

Maximum Total Amount of Grant Payment. A maximum total amount of Grant Payments authorized by this Agreement shall not exceed \$25,000.00. Should the maximum amount of Grant Payments be reached earlier than end of the Grant Term, this Agreement shall terminate as provided herein.

3. **Special Fund.** DISTRICT will provide for the payment of Grant Payments to be made pursuant to this Agreement by establishing a separate fund at the City, or a subaccount of any existing fund or account in the City treasury, into which the Sales Tax received by DISTRICT will be deposited during the Term of this Agreement (the "Special Fund"). Grant Payments shall be made to Company yearly beginning on April 2020, within sixty (60) days of receipt of the request and Company's Annual compliance report, to the extent that such Grant Payments are due and available hereunder. Any amounts left after a Grant Payment for a calendar year has been made may be transferred by DISTRICT to any other account in the City treasury. DISTRICT may maintain or abolish the Special Fund, in its sole discretion, after the Term of this Agreement has ended.
4. **Grant does not create a Debt.** Amounts payable under this Agreement constitute economic development funds and are not secured by the issuance of any bonds.

ARTICLE VII COVENANTS AND DUTIES

1. Company's Covenants and Duties. Company makes the covenants and warranties to the DISTRICT, and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Company.

(a) [DS1] Due to Dollar Tree having the sales tax permit. The execution of this Agreement has been duly authorized by Company's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Company's by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.

(b) Company is not a party to any bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary bankruptcy proceedings.

(c) To its current, actual knowledge, Company has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

(d) Company shall timely and fully comply with all of the terms and conditions of this Agreement.

(e) Company agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of any improvements to the property.

(f) Company shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project. Company agrees to develop the Project in accordance with the ordinances, rules, and regulations of the City in effect on the date the Project was designated, unless specified otherwise in this Agreement.

(g) Company agrees to commence and complete the Project in substantial accordance with the Agreement.

(h) Company shall cooperate with the DISTRICT in providing all necessary information to assist them in complying with this Agreement.

(i) In accordance with Texas Government Code section 2264.051 Company certifies that it does not and will not knowingly employ an undocumented worker, as that term is defined in the section.

(j) To the extent required by Texas Government Code Section 2270.002 Company acknowledges it currently does not, and shall not during the term of this Agreement, "Boycott Israel".

(k) Company shall authorize the Texas Comptroller's Office to release and disclose any and all Sales Tax and Use Tax information relating to the operation of its business within the Project, such agreement to be in form substantially as set forth on Exhibit "C".

2. DISTRICT's Covenants and Duties.

(a) The DISTRICT agrees to pay to Company an amount, as specified below, not to exceed the Maximum Grant Amount from sources contemplated by this Agreement over a period not to exceed the Grant Term, subject to the conditions precedent that Company has timely and fully complied with all applicable terms and conditions contained in this Agreement, and the above designated Development Requirements are then satisfied. Further, DISTRICT's obligation to pay Company shall cease upon payment in full of the Maximum Grant Amount, or the expiration of this Agreement after the Grant Term, even if the Maximum Grant Amount has not been paid, or termination of this Agreement by DISTRICT as provided herein, whichever occurs first.

(b) Failure by DISTRICT to timely and substantially comply with its obligations hereunder shall be an Act of Default by DISTRICT if uncured as provided for herein, and such uncured Act of Default will give Company the right to the contracted amount then currently owing not already provided to Company by DISTRICT in previous payments.

ARTICLE VIII

TERMINATION

1. **Termination.** This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement's Expiration Date;
- (c) Default by Company; or
- (d) Payment of the maximum funds contemplated herein.

ARTICLE IX DISPUTE RESOLUTION

1. **Mediation.** If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to litigation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of mediation shall be assessed equally between the Parties with each party bearing their own costs for attorneys' fees, experts, and other costs of mediation and any ensuing litigation.

2. During the term of this Agreement, if Company files and/or pursues an adversarial proceeding against the DISTRICT regarding this Agreement without first engaging in good faith mediation of the dispute, then, at the DISTRICT's option, all access to the funds provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest bearing account until the resolution of such adversarial proceeding.

3. Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the DISTRICT.

ARTICLE X MISCELLANEOUS

1. **Binding Agreement.** The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Executive Director of the La Vernia Municipal Development District shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the governing body of the City of La Vernia, Texas, and the DISTRICT Board on behalf of the Parties related thereto. Notwithstanding any other provision of this Agreement to the contrary, performance of either Party under this Agreement is specifically contingent on Company obtaining a Certificate of Occupancy from the City of La Vernia and commencing operations at the Facility under the terms of this Agreement.

2. DISTRICT's Liability Limitations. Should DISTRICT fail to timely or substantially comply with any one or more of the requirements, obligations, duties, terms, conditions, or warranties of the Agreement, such failures shall be an Act of Default by DISTRICT and DISTRICT shall have ninety days to cure and remove the Default upon receipt of written notice to do so from Company. Company specifically agrees that DISTRICT shall only be liable to Company for the amount of the money payments then currently owing to Company, and shall not be liable to Company for any alleged or actual incidental or consequential damages. It is further specifically agreed that the DISTRICT shall only be required to make payments up to the Reimbursable Sales Tax Collected by the DISTRICT.

3. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

4. Effective Date. This Agreement shall become effective June 3, 2019.

5. Representations and Warranties. The DISTRICT represents and warrants to Company that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Company represents and warrants to the DISTRICT that it has the requisite authority to enter into this Agreement.

6. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Company at no time will be acting as an agent of the DISTRICT and that all consultants or contractors engaged by Company respectively will be independent contractors of Company; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the DISTRICT will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Company respectively under this Agreement, unless any such claims are due to the fault of the DISTRICT.

(b) By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the DISTRICT with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of the DISTRICT, or any board member, or agent of the DISTRICT, shall be personally responsible for any liability arising under or growing out of this Agreement.

7. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

If intended for DISTRICT: DISTRICT
P.O. Box 225
La Vernia, Texas 78121
Attention: President

With a copy to:
Denton, Navarro, Rocha, Bernal & Zech, PC
Attention: T. Daniel Santee
2517 North Main Avenue
San Antonio, TX 78212

If to the Company: BFEF Properties LLC
Attn: Kevin Brown
PO Box 130
La Vernia, TX 78121

Any Party may designate a different address at any time upon written notice to the other Parties.

8. **Governmental Records.** All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10

9. **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Wilson County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

10. **Amendment.** This Agreement may be amended by mutual written agreement of the Parties, as approved by the governing bodies of DISTRICT and the City of La Vernia, Texas.

11. **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

12. **Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by governing bodies of DISTRICT and the City La Vernia, Texas.

14. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

15. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

16. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes. Exhibits included:

Exhibit "A" Legal Description of the Property.

17. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

18. Employment of Undocumented Workers. During the term of this Agreement, Company agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), Company shall be in Default and repay the amount of the funds received by Company from the DISTRICT as of the date of such violation within one hundred twenty (120) days after the date Company is notified by the DISTRICT of such violation, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. Company is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which Company enters into with any subsidiary, assignee, affiliate, or franchisee for which funds provided herein will be used.

19. Indemnification.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE DISTRICT, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUSTMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE DISTRICT HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF THE FAILURE OF COMPANY TO MAINTAIN A PLACE OF BUSINESS AT THE PROPERTY OR IN THE DISTRICT, OR AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY COMPANY UNDER THIS AGREEMENT EXCEPT THAT THE

INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE DISTRICT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT BEING THE INTENTION OF THE PARTIES THAT COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY ANNUAL REIMBURSEMENT FUNDS PAID TO COMPANY HEREIN THAT INCLUDES DISTRICT SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE DISTRICT.

20. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

21. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and it is also the intention of the Parties that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid, or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

[Signature Page to Follow]

Executed on this _____ day of _____ 2019.

DISTRICT

By:

President

Brittani Porter

ATTEST:

By:

Secretary

Brittani Porter

Executed on this 24th day of September, 2019.

COMPANY

By:

Name:

Kevin D. Brown

Title:

*MEMBER for BFEF Properties, LLC
a Texas limited liability company*

ATTEST:

By:

Brittani Porter

