

ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT
BETWEEN THE BENBROOK ECONOMIC DEVELOPMENT
CORPORATION AND ABIC, LLC

This Economic Development Agreement ("Agreement") is made and entered into by and between ABIC, LLC ("ABIC"), 2715 Derby Court, Southlake, Texas, a Texas limited company, by and through Rabin Khanal and Sanjay Rajbhandari, its Managing Partners, and the Benbrook Economic Development Corporation (the "Corporation"), a nonprofit corporation organized under the Development Corporation Act of 1979, codified in Subtitle C1 of Title 12 of the Texas Local Government Code (Chapters 501 through 505) (the "Act"), for the purposes and considerations stated below:

RECITALS:

1. ABIC owns Timber Creek Shopping Center, a commercial property located within the corporate limits of the City of Benbrook, hereafter referred to as the "Center."
2. The Center was constructed in 1984, offers 17,486 square feet of commercial space, and is 90 percent full occupancy.
3. ABIC has recently invested in exterior improvements, to include a new pylon sign and new walkway lighting.
4. ABIC intends to invest additional capital in aesthetic improvements, and is seeking financial assistance from the Corporation to offset anticipated total Project costs of approximately \$200,000.
5. The Corporation has determined and found that the Project and Improvements, as defined herein, will create or sustain jobs as defined by the Act, and that the expenditure of the Corporation for improvements set forth in this Agreement is suitable or required for the development of new and expanded business enterprise, and falls within the definition of a "project" as defined in Sections 501.103 and 505.157 of the Act.
6. The Corporation has determined that Improvements to the Center will increase the taxable value of the Center and the value of the Center will outweigh the amount of expenditures required of the Corporation under this Agreement.
7. The Corporation, to encourage redevelopment and continued operation of the Center, desires to participate in the funding of the cost to construct the Improvements.

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. **Authorization.**

This Agreement is authorized by the Act.

2. **Definitions.**

CAPITAL EXPENDITURE means the cost of design, material, labor for the improvements, and permit fees.

CITY means the City of Benbrook, Texas.

CENTER means Timber Creek Shopping Center, 931 Winscott Road, Benbrook, Texas 76126.

IMPROVEMENTS means parking lot improvements to include recycled asphalt and cement stabilization, asphalt crack sealing and overlay, and touch-up pavement markings (see **Exhibit "A"** attached); new aluminum soffit, new paint, new stucco and new illuminated channel letter signage for the entire header of the building (see **Exhibit "B"** attached), and landscape/plant features to include at least ten (10) large decorative concrete planters containing Texas native plants to be placed along the columns of the Center walkway.

PAYMENT means the payments by the Corporation to ABIC, LLC pursuant to Section 5 of this Agreement.

PROJECT means the expenditure by the Corporation not to exceed One Hundred Fifty Thousand Dollars (\$150,000) for the construction of Improvements.

SUBSTANTIALLY COMPLETE means the date ABIC obtains final approval of all inspections from the City confirming that the Improvements have been substantially completed in conformance with Exhibits "A" and "B", and to include the landscape planters described above.

3. **Term.**

This Agreement will terminate when all duties and obligations of both parties are complete, unless otherwise terminated prior to that date under the terms of the Agreement.

4. **Covenants of ABIC.**

ABIC agrees to the following:

- (1) Design, obtain necessary permits, and Substantially Complete construction of the Improvements no later than December 31, 2020, with a documented Capital Expenditure of no less than two hundred thousand dollars (\$200,000.00) for the Improvements;
- (2) Invest capital in the improvements without passing those costs on to current tenants, either by seeking direct payment from them, or by raising current tenant rents to cover costs of the Improvements, unless as part of current lease terms;
- (3) If practicable, purchase construction material for the Improvements from vendors within the City of Benbrook, if available in Benbrook, at a competitive price;
- (4) Provide the Corporation with documentation satisfactory to the Corporation, in the form of paid receipts/invoices, showing the Capital Expenditure for the Improvements;
- (5) Comply with all subdivision regulations, building codes, and other ordinances of the City applicable to the Improvements.

5. **Duties of Corporation.**

The Corporation will pay ABIC an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000) plus the cost of the City permit fees associated with the Improvements, to reimburse ABIC for a portion of the Capital Expenditure within thirty (30) days after: (a) the Improvements are Substantially Complete and (b) the Corporation receives documentation satisfactory to the Corporation, in the form of paid receipts/invoices, showing the cost to construct the Improvements, so long as ABIC still owns the Center and is current on all property taxes and no material violations of subdivision regulations, building codes, or other ordinances have been issued, and ABIC is compliant with the terms of this Agreement.

6. **Indemnification.**

ABIC, IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PREMISES OR IMPROVEMENTS. ABIC AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CORPORATION, ITS OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES

OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CORPORATION, ITS OFFICERS, AGENTS OR EMPLOYEES.

7. **Access to Information.**

ABIC agrees to provide the Corporation access to information related to the construction of the Improvements and Project during regular business hours, upon reasonable notice. The Corporation shall have the right to require ABIC to submit any reasonable, non-confidential necessary information, documents, invoices, receipts or other records to verify costs of the Improvements and capital expenditures related to the Center, and compliance with the terms of this Agreement, including without limitation Section 4(2).

8. **General Provisions.**

a. **Mutual Assistance.** ABIC and the Corporation shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and provisions.

b. **Representations and Warranties.** ABIC represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. ABIC represents and warrants to the Corporation that it will not violate any federal, state, or local laws in operating the business, that all proposed Improvements shall conform to the applicable building codes, zoning ordinances, and all other ordinances and regulations.

c. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

d. **Attorneys Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action. Provided, however, all reasonable attorney's fees incurred by the Corporation for preparation or review of any revision, modification, or amendment of this Agreement proposed by ABIC following the original execution of this Agreement, and all reasonable attorney's fees incurred for preparation or review of other ABIC-proposed additional or related documents shall be at ABIC's sole cost.

e. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

f. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by ABIC and the Corporation.

g. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. ABIC may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation, which approval shall not be unreasonably withheld or delayed.

h. **Notice.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

ABIC: ABIC, LLC, Rabin Khanal
ABIC, LLC, Sanjay Rajbhandari
2715 Derby Ct.
Southlake, Texas 76092

CORPORATION: Director
Benbrook Economic Development Corporation
911 Winscott Road
P.O. Box 26569
Benbrook, Texas 76126

with a copy to: Betsy Elam
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place
Suite 200
Fort Worth, Texas 76107

i. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

j. **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Tarrant County, Texas.

k. **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each

clause or 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.

l. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

m. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

n. **Covenant Running with the Land.** All rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement, shall exist at all times as long as this Agreement is in effect, among all parties having any right, title, or interest in any portion of all of the Center.

o. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, declaration of disaster due to pandemic, terrorist attacks, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

p. **Compliance with Law.** ABIC covenants and certifies that it does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if ABIC or its branch, division, or department is convicted of a violation under 8 U.S.D. Section 1324a(f), ABIC shall repay the Corporation the full amount of the Payment made under this agreement, plus 10% per annum from the date the Payment was made. Repayment shall be paid within one hundred and twenty (120) days after the date ABIC receives notice of violation from the Corporation.

**BENBROOK ECONOMIC
DEVELOPMENT CORPORATION**

ABIC, LLC

By: _____
President

Date: _____

By:  _____
Rabin Khanal, Managing Partner

By:  _____
Sanjay Rajbhandari, Managing Partner

Date: _____

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

(SEAL)

Notary Public in and for the
State of Texas
My commission expires _____

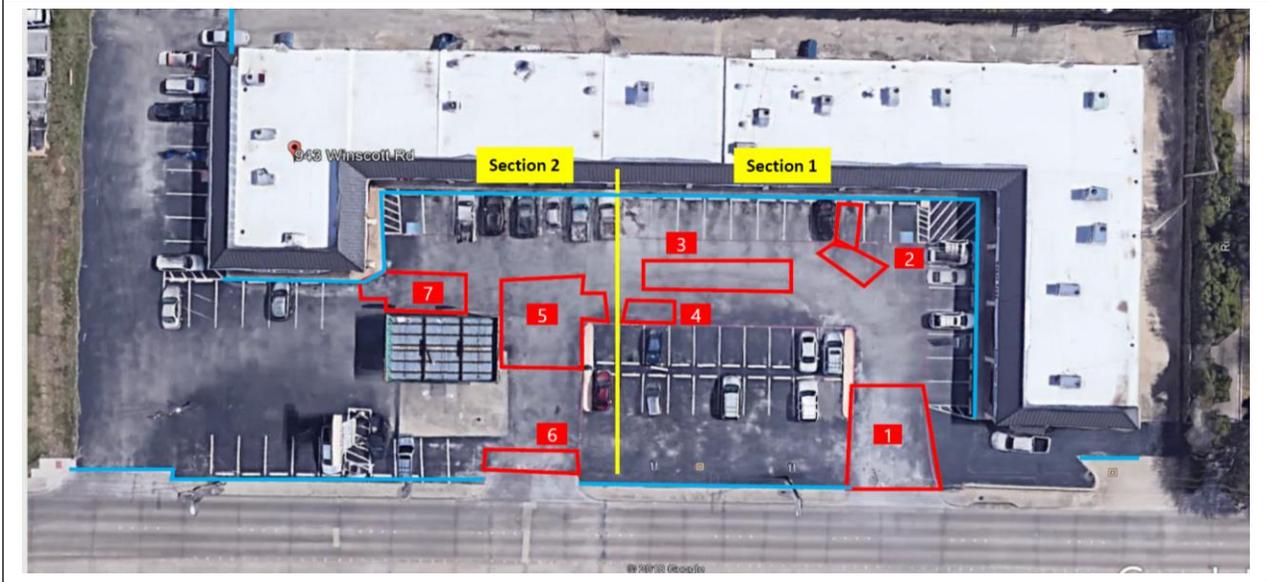
ATTEST:

Joanna King, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Betsy Elam, City Attorney

EXHIBIT "A"



Asphalt Overlay			
Repair Type	Description	Quantity	U
Misc.	Remove & Reset Wheel Stops	71	EA
Asphalt	Mill to Grade	3,163	SF
Asphalt	Wedge Mill	3,588	SF
Asphalt	Asphalt Crack Sealing	1,500	LF
Asphalt	1.5" Asphalt Overlay	34,616	SF
Misc.	Power Wash Islands	2	EA
Maint.	Pavement Markings	1	LS

EXHIBIT "B"

ILLUMINATED CHANNEL LETTERS



AFTER

