

**CHAPTER 380 ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT  
BETWEEN THE CITY OF MANSFIELD, BRAIN STORM SHELTER,  
BACKYARD COME AS YOU ARE, LP AND TAX INCREMENT REINVESTMENT  
ZONE NUMBER TWO OF THE CITY OF MANSFIELD REGARDING THE BACKYARD  
DEVELOPMENT FOR PUBLIC AND PRIVATE IMPROVEMENTS TO PROPERTY  
WITHIN THE TAX INCREMENT REINVESTMENT ZONE NUMBER TWO**

This Economic Development Agreement ("Agreement") is made and entered into pursuant to Texas Local Government Code Chapter 380 by and between THE CITY OF MANSFIELD, TEXAS (the "City"), a Texas home rule municipality, THE BOARD OF DIRECTORS OF THE TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, CITY OF MANSFIELD, TEXAS (hereinafter called "Board"), BRAIN STORM SHELTER, LLC ("BSS"), a Texas Limited Liability Company, and BACKYARD COME AS YOU ARE, LP ("MR"), a Texas limited partnership, for the purposes and considerations stated below:

**RECITALS AND FINDINGS**

1. MR owns or will own the property located at 109 North Main Street, Mansfield, Texas 76063, within the corporate limits of the City (hereafter referred to as the "Property") as depicted on Exhibit "A", where it intends to construct or cause the construction of the Public and Private Improvements (as defined below).

2. MR intends to make a new Capital Investment in the Property of at least Two Million Seven Hundred Ten Thousand Dollars (\$2,710,000.00) to construct the Private Improvements and related infrastructure.

3. MR has requested that the City grant certain economic development incentives and concessions to MR, specifically: (1) the City agreeing to pay Fifty Thousand Dollars (\$50,000.00) as consideration for MR dedicating to the City for public use the Trail and Parking Area (as defined below), and (2) an economic development grant of One Hundred Eighty Thousand and Two Dollars (\$180,002.00) to reimburse MR for the cost of constructing the Public Improvements (as defined below).

4. BSS intends to operate three restaurants ("the Restaurants") in the Private Improvements on the Property, and has also requested that the City grant certain economic development incentives and concessions to BSS, specifically, grants equal to certain percentages of sales tax generated by the Restaurants during the next ten years.

5. The City has determined that granting the requested economic incentives and concessions will serve the public interest by providing public amenities and parking, and by promoting the success of the Restaurants and other nearby businesses that provide needed economic development in the City.

6. The City, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of MR's capital investment in the Property, desires to have MR make the capital investment in the Property. The Backyard will increase the taxable value of the Property and will directly result in the creation of jobs on the Property and will indirectly result in the creation of additional jobs throughout the City. As a consequence, the value of the benefits of the economic development incentives and concessions will substantially outweigh the amount of expenditures required of the City under this Agreement.

7. The City recognizes the importance of its continued role in local economic development, and, to encourage the development and operation of the Property, to promote the creation of new businesses, and to obtain the benefits stated in this Agreement, desires to participate in the funding of the cost of certain Private Improvements (hereinafter defined) which are necessary in order for MR to make the capital investment in the Property and to construct the Private Improvements as hereinafter set forth, and for BSS to open and operate the Restaurants, all of which will aid and promote economic development in the City.

8. In accordance with the provisions of the Tax Increment Financing Act, V.T.C.A. Tax Code, Chapter 311 (the "Act"), on December 10, 2012, the Mansfield City Council approved Ordinance No. 1861-12, creating, establishing and designating Tax Increment Reinvestment Zone Number Two of the City of Mansfield" (hereinafter called the "TIF District" or "District").

9. MR owns the Property, which is situated within the TIF District, and intends to develop the property for use as a high quality, first-class urban commercial development together intended for development as three restaurants with ancillary areas and improvements.

10. The Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality consistent with the project plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in the Act.

11. On February 11, 2013, after approval by the Board, the Mansfield City Council approved the Tax Increment Reinvestment Zone Financing and Project Plans (herein so called), and the Financing Plan (herein so called).

12. The Board authorized the execution of this Agreement, for the construction of the Public and Private Improvements in accordance with the approved Project Plan and Financing Plan, and authorizing reimbursement to MR from the Tax Increment Fund for the construction of the Public and Private Improvements under the conditions set forth herein.

13. Pursuant to Resolution No. [REDACTED], the City Council authorized the execution of this Agreement, for the construction of the Public Improvements to facilitate development of the Property and the construction of the Private Improvements in accordance with the approved Project Plan and Financing Plan, and authorizing reimbursement to MR from the Tax Increment Fund for the construction of the Public Improvements under the conditions set forth herein.

14. The Public Improvements constructed within the TIF District boundaries, as set forth in this Agreement, are consistent with encouraging development of the TIF District in accordance with the purposes for its creation and are in compliance with the ordinance creating the TIF District adopted by the City and all applicable laws.

15. The City and Board agree to reimburse funds advanced by MR for the cost of making the Public Improvements as contemplated herein and as contemplated by the Act and as is consistent with the Project Plan and Financing Plan.

16. The City is authorized by Article 52 of the Texas Constitution and Section 380.001 Texas Local Government Code to provide economic development grants to promote local economic development and stimulate business and commercial activities in the City.

17. The City Council finds that the Project, as herein defined, will promote local economic development and stimulate commercial and business activity.

18. The City Council also finds and determines that this Agreement is authorized by Chapter 311 of the Texas Tax Code and by Section 380.001 of the Texas Local Government Code, and hereby establishes a Program to stimulate commercial activity in the TIF District by bringing a first-class urban commercial development to Main Street and finds that this Agreement implements the Program.

19. The City may enter into an agreement with the TIF Board to loan funds sufficient to pay the incentives set forth herein, under Chapter 380 of the Texas Local Government Code, with repayment to the City made as TIF revenues accrue.

## **TERMS AND CONDITONS**

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 Chapter 380 of the Texas Local Government Code.

## **2. Definitions.**

BACKYARD means the commercial development to be constructed pursuant to this Agreement, and includes the Property, and the Private Improvements, including the Restaurants.

BSS has the meaning set forth in the Preamble above.

CAPITAL INVESTMENT means the actual cost incurred related to the renovation and expansion of the Private Improvements and related infrastructure, including the actual construction costs of all buildings, renovations, site preparation, structures, infrastructure, utilities, landscaping and on-site improvements, including labor and materials, engineering costs, surveying costs, fees of consultants, permit and inspection fees, and business personal property and equipment located on the Property after the date of this Agreement that are subject to ad valorem taxes. It does not include insurance costs, marketing costs or any interest paid to finance the cost of Capital Investment.

CERTIFICATE OF OCCUPANCY means the document issued by the City of Mansfield for the Restaurants certifying the building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupying.

CITY has the meaning set forth in the Preamble above.

FTE means any employee on a forty (40) hour or more per week schedule or the combination of two (2) or more employees on part-time schedules equaling at least forty (40) hours without regard to whether individuals in those positions are the same as those in previous counts.

MR has the meaning set forth in the Preamble above.

PAYMENT means the payment made by the City to MR and BSS under the terms and conditions of this Agreement.

PRIVATE IMPROVEMENTS means the construction of the Restaurants, sidewalks, landscaping, and related infrastructure and on the Property as depicted on the Preliminary Site Layout attached hereto as Exhibit "B."

PROJECT means the construction of the Public and Private Improvements.

PROJECT PLAN AND FINANCING PLAN means the Tax Increment Financing Reinvestment Zone Project Plan and Financing Plan approved by Ordinance No. OR 1861-12 of the City of Mansfield.

PROPERTY has the meaning set forth in the Recitals.

PUBLIC IMPROVEMENTS means parking spaces, parking lot lighting and striping, sidewalks, ADA ramps, wheel stops and drive connections to an existing adjoining parking lot to the north as shown in the Engineer's Opinion of Cost attached hereto as Exhibit "C."

RESTAURANTS means three (3) restaurants located on the Property to include Twisted Root, Quincy's Chicken Shack and a third restaurant concept operated by BSS or a third party. BSS anticipates that the third restaurant concept will be a specialty dessert concept, such as Melt Ice Cream, Motor Sisters Ice Cream, Cow Tipping Creamery, Amy's Ice Cream, Emporium Pies, Dude Sweet Chocolate or Hypnotic Emporium. In the event BSS wishes to bring a third restaurant concept that is outside the specialty dessert market, such concept will require MR and City approval, which approval will not be unreasonably withheld, conditioned, or delayed.

SUBSTANTIAL COMPLETION or SUBSTANTIALLY COMPLETE means with regard to the Public Improvements and Private Improvements, the date the City issues a Letter of Acceptance or Certification of Occupancy for the each.

TAX INCREMENT FUND means the Tax Increment Fund of Mansfield Tax Increment Financing Reinvestment Zone No. Two.

TIF DISTRICT means the district created by Ordinance No. 1861-12 of which the Property is a part.

TRAIL AND PARKING AREA means a tract of real property approximately 28,129.06 square feet in size adjacent to the Property and referenced as such on the Preliminary Site Layout.

### **3. Term.**

This Agreement shall be effective as of the date of execution of all parties and will continue to be in force and effect until September 1, 2027 or until all of the payments provided for herein are made, unless terminated earlier under the terms of this Agreement.

### **4. Covenants of MR to City.**

a. In consideration of City agreeing to grant the economic development incentives and concessions to MR described herein in accordance with the terms and conditions of this Agreement, MR agrees to:

- (1) Make a total new Capital Investment for the Private Improvements and related infrastructure on or before September 1, 2017 in an amount of no less than Two Million Seven Hundred Ten Thousand Dollars (\$2,710,000.00).

- (2) Deliver the Private Improvements to the operator of the Restaurants by January 1, 2017 to afford the operators of the Restaurants ample time to complete the required internal improvements.
- (3) In conjunction with the long-term development plan for the TIF District, as described in the Project Plan, commence construction of the Private Improvements and related infrastructure no later than ninety (90) days after approval of appropriate zoning by the City.
- (4) Render the Property and the Private Improvements to the Tarrant County Appraisal District and remain current on all ad valorem taxes for the Term of this Agreement;
- (5) Provide documentation to the City for the Capital Investment in a manner acceptable to the City;
- (6) Within 30 days after a replat creating the Trail and Parking Area is approved and recorded, sell and convey to the City for general public use the Trail and Parking Area for Fifty Thousand Dollars (\$50,000.00);
- (7) Provide at no cost to the City construction plans and landscape design for the Public Improvements, such plans to comply with all City construction specifications and requirements and be subject to written approval of the City Director of Planning and City Director of Public Works and
- (8) In conjunction with the long-term development plan for the TIF District, as described in the Project Plan, commence construction of the Public Improvements and related infrastructure no later than ninety (90) days after approval of appropriate zoning by the City, and complete construction of the Public Improvements at MR's sole cost and expense, the Public Improvements in compliance with the construction plans and landscape design approved by the City and to the City's reasonable satisfaction, and dedicate such completed Public Improvements to the City no later than September 1, 2017.
- (9) Include in any lease or other assignment of a fee or leasehold interest in the Property or a portion thereof that such assignee or tenant, and their assignees, be responsible for trash and debris removal on the Property or any portion thereof.

b. Should MR fail to comply with any term of this Agreement, MR shall have sixty (60) days after written notice from the City to come into compliance. If the

noncompliance is not cured within that period, or an agreement on a time frame to come into compliance is not reached with the City, MR will forfeit its right to reimbursement by the City. The City and MR agree that if MR is unable to deliver the Private Improvements to the operator of the Restaurants by January 1, 2017, the deadlines for obtaining a certificate of occupancy and opening of the Restaurants will be extended on a day-for-day basis without triggering a default or non-compliance event under this paragraph. In the event MR's uncured noncompliance occurs after a grant of funds is received, MR shall immediately upon demand repay the City a portion of the grant of funds received by MR under this Agreement plus ten percent (10%) interest per annum which shall accrue from the date of default until the date the debt is repaid in full.

c. MR covenants and certifies that it does not and will not knowingly employ any undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if MR is convicted of a violation under 8 U.S.C. Section 1324a (f), MR shall repay to the City the full amount of all payments made under Section 5 of this Agreement, plus ten percent (10%) interest per annum from the date such payment was made until the date of full repayment. Repayment shall be paid within one hundred twenty (120) days after the date MR receives a notice of violation from the City. City understands and acknowledges that MR is leasing the Property to the Restaurants, and MR does not control the hiring practices of the Restaurants.

## **5. Covenants of BSS to City.**

a. In consideration of City agreeing to grant the economic development incentives and concessions to BSS described herein in accordance with the terms and conditions of this Agreement, BSS agrees to:

- (1) Obtain a Certificate of Occupancy for the first Restaurant no later than June 1, 2017, with opening of that Restaurant within twenty (20) days of that date;
- (2) Obtain a Certificate of Occupancy for the third Restaurant no later than September 1, 2017, with opening of that Restaurant within twenty (20) days of that date;
- (3) Operate the three Restaurants, Twisted Root, Quincy's Chicken Shack and a third restaurant concept operated by BSS or a third party, in the Private Improvements in a commercially reasonable manner and during normal dates and hours for restaurants of such type on a regular, on-going basis throughout the term of the economic development incentives and concessions granted herein.
- (4) Not operate any Twisted Root restaurant or similarly-themed restaurant within an eight (8) mile radius of the Property during the term of this Agreement.

- (5) Not operate any Quincy's Chicken Shack restaurant or similarly themed restaurant within an twelve (12) mile radius of the Property during the term of this Agreement.
- (6) Create a minimum of forty (40) FTE jobs by September 1, 2017, and retain them for the Term of this Agreement.

b. Should BSS fail to comply with any term of this Agreement, BSS shall have thirty (30) days after written notice from the City to come into compliance. If the noncompliance is not cured within that period, or an agreement on a time frame to come into compliance is not reached with the City, BSS will forfeit its right to further economic development incentives and concessions, including any additional sales tax rebates, from the City.

## **6. Covenants of the City to MR.**

a. In consideration of MR's agreement to construct the Public Improvements and the Private Improvements, provided MR is in compliance with its duties and obligations and terms of this Agreement, has commenced construction of the Public Improvements and related infrastructure no later than ninety (90) days after approval of appropriate zoning by the City, has constructed and completed the Public Improvements in compliance with the construction plans and landscape design approved by the City and to the City's reasonable satisfaction, and has timely dedicated the Trail and Parking Area and such completed Public Improvements to the City, provided that MR first submits evidence satisfactory to the City of MR's expenditures for its Construction Costs for the Public Improvements, the City agrees to reimburse MR for the Public Improvements by providing MR with an economic development grant equal to MR's actual out-of-pocket costs and expenses for constructing the Public Improvements, but not to exceed the amount of One Hundred Eighty Thousand and Two Dollars (\$180,002.00) to reimburse MR for the cost of constructing the Public Improvements, said grant to be paid within thirty (30) days after acceptance of such Public Improvements and the dedication thereof. The full amount of the economic development grant discussed in this paragraph shall be ultimately funded by the TIF reimbursing the City's expenditure for payments to MR under this Agreement.

b. In consideration of MR's agreement to construct the Public Improvements and dedicate the Trail and Parking Area to the City, and provided MR is in compliance with its duties and obligations and terms of this Agreement, and has timely dedicated the Trail and Parking Area to the City, the City shall pay to MR an amount not to exceed Fifty Thousand Dollars (\$50,000.00). Of this amount, Thirty-two Thousand, One Hundred and Sixty-Eight Dollars (\$32,168.00) will be advanced by the City from its General Fund and ultimately reimbursed to the City by the TIF reimbursing the City's expenditure for payments to MR under this Agreement, and Seventeen Thousand Eight Hundred and Thirty-Two (\$17,832.00) Dollars of this amount will be funded directly by the Mansfield Park Facilities Development Corporation.



c. In consideration of MR's agreement to construct the Public Improvements and the Private Improvements, provided MR is in compliance with its duties and obligations and terms of this Agreement, has commenced construction of the Public Improvements and related infrastructure no later than ninety (90) days after approval of appropriate zoning by the City, has constructed and completed the Public Improvements in compliance with the construction plans and landscape design approved by the City and to the City's reasonable satisfaction, and has timely dedicated the Trail and Parking Area and such completed Public Improvements to the City, City agrees that the City shall maintain the irrigation system, trees, turf and other vegetation, the concrete walkway and trailhead to standards consistent with the approved landscape design, provided that the City may modify the landscape design as determined reasonably advisable by the City, provided that such modifications are reasonably consistent with the character and spirit of the original design.

## **7. Covenants of the City to BSS.**

Provided BSS is in compliance with each term of this Agreement, within thirty (30) days after BSS provides documentation satisfactory to the City regarding the amount of sales revenue and the sales tax collections that BSS collected for each of the Restaurants payable to the City, the Mansfield Economic Development Corporation, and the Mansfield Park Facilities Development Corporation for the period beginning September 1, 2017 through August 31, 2018, and continuing for each year period through August 31, 2027, the City will make economic development grants to BSS for each of the Restaurants in an amount corresponding to the total sales tax revenue generated by such Restaurant payable to the City, the Mansfield Economic Development Corporation, and the Mansfield Park Facilities Development Corporation, multiplied by the percentage shown in the spreadsheet attached hereto as Exhibit "D" for each such annual periods. The annual economic development grants will be due within thirty (30) days after BSS provides the information described above. After the annual period ending August 31, 2027, the City's obligation to make economic development grants to BSS will cease. Any delay in the opening of any of the Restaurants will not extend these periods. If BSS elects to close any of the Restaurants, and BSS fails to replace it with another restaurant approved by the City in writing within six (6) months (such approval not to be unreasonably withheld, conditioned, or delayed), the City will not be required to make any make any economic development grant to BSS attributable to that Restaurant for such annual period.

## **8. Covenants of the TIF District to City.**

a. In consideration of the City's willingness to initially fund the reimbursement to MR for MR's actual out-of-pocket costs and expenses for constructing the Public Improvements on the terms and conditions provided in Section 6.a. above, and in consideration of MR's construction of the Public Improvements, the Board agrees that the TIF District will reimburse the City for the economic development grant to MR described above, in the actual amount paid out by the City as provided in Section 6.a.

above, not to exceed the amount of One Hundred Eighty Thousand and Two Dollars (\$180,002.00), for the cost of constructing the Public Improvements.

b. In consideration of the City's willingness to initially fund the consideration for MR's agreement to construct the Public Improvements and agreeing to dedicate the Park and Parking Area to the City on the terms and conditions provided above, and in consideration of MR's agreement to construct the Public Improvements and agreeing to dedicate the Park and Parking Area to the City, the Board agrees that the TIF District will reimburse the City for a portion of the consideration to be paid to MR for MR's agreement to dedicate the Park and Parking Area to the City, the Board agrees that the TIF District will reimburse the City the sum of Thirty-two Thousand, One Hundred and Sixty-Eight Dollars (\$32,168.00).

#### **8. Private Improvements.**

MR and BSS shall be solely responsible for the design of the Private Improvements and shall comply with all building codes and other ordinances of the City applicable to the construction of the Private Improvements.

#### **9. Indemnification.**

MR AND BSS, IN PERFORMING THE OBLIGATIONS UNDER THIS AGREEMENT, ARE ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PROPERTY OR PRIVATE IMPROVEMENTS. MR AND BSS AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, 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 USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE BY MR AND BSS OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF MR AND BSS, OR THE OFFICERS, AGENTS OR EMPLOYEES, REGARDLESS OF WHETHER SUCH DEATH OR INJURY TO A PERSON OR THE LOSS OF USE, OR DAMAGE TO PROPERTY WAS CAUSED IN PART BY THE CITY'S NEGLIGENCE.

#### **10. Access to Information.**

MR and BSS agree to provide the City access to information related to the performance of their respective obligations under this Agreement during regular business hours upon reasonable notice. The City shall have the right to require MR

and/or BSS to submit any reasonably necessary information, documents, invoices, receipts or other records to verify MR's or BSS's compliance with this Agreement.

## **11. General Provisions.**

a. **Mutual Assistance.** MR, BSS and the City shall 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.

b. **Representations and Warranties.** MR and BSS each represent and warrant to the City that it has the requisite authority to enter into this Agreement. MR and BSS each separately represent and warrant to the City that it will not violate any federal, state or local laws in operating the business, that all proposed Private Improvements shall conform to the applicable building codes, health and safety codes zoning ordinances and all other ordinances and regulations, and that such parties' actions and operations will be conducted in compliance with the applicable building codes, health and safety 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. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

e. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by the affected parties.

f. **Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. MR and BSS may assign all or part of their respective rights and obligations hereunder only upon prior written approval of the City.

g. **Notice.** Any notice required or permitted to be delivered by this Agreement 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:

MR:        Backyard Come As You Are, LP  
              100 N. Mitchell Rd.  
              Mansfield, Texas 76063  
              Attn: Kim McCaslin

BSS:       Brain Storm Shelter

5211 Bonita Ave  
Dallas, Texas 75206  
Attn: Jason Boso

With a copy to: David Denney  
The Law Offices of David T. Denney, PC  
8350 N. Central Expressway, Suite 925  
Dallas, Texas 75206

CITY: City of Mansfield  
1200 E Broad Street  
Mansfield, Texas 76063  
Attn: City Manager

With a copy to: Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, LLP  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

h. **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.

i. **Applicable Law/Venue.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and is wholly performable in Tarrant County, Texas, and venue for any legal action regarding this Agreement shall lie in Tarrant County, Texas.

j. **Severability.** In the event any provision of this Agreement is ruled illegal, invalid, or unenforceable by any court of proper jurisdiction, 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.

k. **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.

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

m. **Default.** If a party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of

written notice of such default from the other party (the “Complaining Party”) to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its actual but not consequential damages and/or specific performance for such default.

n. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of strikes, lockouts, 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, 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, provided that the foregoing shall not be applicable to any payment obligation of either party under this Agreement.

o. **Attorney’s Fees.** In the event it should become necessary to take legal action to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable attorney’s fees and costs of court.

**END OF TERMS – SIGNATURES AND EXHIBITS TO FOLLOW**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF MANSFIELD**

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

City Secretary

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**TAX INCREMENT REINVESTMENT ZONE  
NUMBER TWO OF THE CITY OF MANSFIELD**

By: \_\_\_\_\_  
Chair of the Board of Directors

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Secretary

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**BACKYARD COME AS YOU ARE, LP**  
a Texas limited partnership

By: McCaslin Schlieker Investments, Inc.  
Its sole general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGEMENT**

BEFORE ME, the undersigned authority, on this date personally appeared \_\_\_\_\_ of McCaslin Schlieker Investments, Inc., sole general partner of Backyard Come As You Are, LP, a Texas limited partnership, who after being duly sworn stated that she signed the foregoing instrument on behalf of said entity for the purposes expressed therein on the date shown.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_

Date: \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**BRAIN STORM SHELTER, LLC**

By: \_\_\_\_\_  
Jason Boso, Manager

Date: \_\_\_\_\_

**ACKNOWLEDGEMENT**

BEFORE ME, the undersigned authority, on this date personally appeared Jason Boso, who after being duly sworn stated that he is the Manager of Brain Storm Shelter, LLC and that he signed the foregoing instrument on behalf of said entity for the purposes expressed therein on the date shown.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_

Date: \_\_\_\_\_



## **Exhibit List**

Exhibit A – Property description

Exhibit B – Preliminary Site Layout

Exhibit C – Engineer Opinion of Cost

Exhibit D – Spreadsheet of percentage of sale tax reimbursement