

**A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MANSFIELD AND BETHLEHEM'S PIONEER PLACE, LP**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Mansfield, a Texas municipal corporation of Tarrant, Johnson and Ellis Counties, Texas (hereinafter called "City") and Bethlehem's Pioneer Place, LP, a Texas Limited Partnership (hereinafter called "Pioneer"), (collectively, the "Parties").

WITNESSETH:

WHEREAS, Pioneer plans to develop a new 135 unit multi-family property for low income senior citizens known as "Pioneer Place" located within the corporate city limits of Mansfield; and

WHEREAS, the Development will be located in the West Broad Corridor, which is an area that has long been a blighted, economically disadvantaged community; and

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the grant of public funds to promote economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the Development represents an opportunity for positive change for the West Broad Corridor; and

WHEREAS, numerous economic development studies have shown that business and retail development follows upgraded and quality residential development; and

WHEREAS, the City Council finds and determines that it is necessary to increase the number and quality of the housing stock in the West Broad Corridor to stimulate business and commercial activity in the City; and

WHEREAS, the City desires to provide the incentive herein to assist Pioneer with costs related to the construction of the Development; and

WHEREAS, Pioneer desires to participate in the Program, as hereinafter defined, by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program by encouraging Pioneer to construct affordable senior housing in the West Broad Corridor in Mansfield, Texas, which will aid in the development of the residential housing market, and encourage retail businesses to locate in Mansfield.

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:

SECTION 1. DEFINITIONS

In this Agreement, the following words shall have the meanings ascribed to them:

AD VALOREM TAX means all ad valorem taxes paid to the City attributable to the Property and the Development which are actually received by the City, excluding taxes attributable to the value of oil and gas revenues.

APPROVED PLANS means construction plans for the Development that conforms to all City regulations and have, as of the date hereof, been approved by City.

CITY means the City of Mansfield, a Texas home rule municipality.

DEVELOPMENT or PIONEER PLACE means the construction and operation of a 135 unit multi-family facility for low income senior citizens, located on the Property, substantially as depicted on Exhibit A, known as Pioneer Place.

EFFECTIVE DATE means the date set forth in Section 16 of this Agreement.

EVENT OF BANKRUPTCY OR INSOLVENCY means the dissolution or termination of Pioneer's existence as a going business, insolvency, appointment of receiver for any part of Pioneer's property and such appointment is not terminated within 60 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Pioneer and such proceeding is not dismissed within 60 days after the filing thereof.

PERSON means any natural person, governmental agency or instrumentality, estate, nominee, custodian, or any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, unincorporated organization, cooperative or association, or any foreign trust or foreign business organization.

PIONEER means Bethlehem's Pioneer Place, LP, a Texas limited partnership.

PROGRAM has the meaning set forth in Section 2 of this Agreement.

PROGRAM PAYMENT(S) means the payments made to Pioneer pursuant to Section 4 of this Agreement.

PROPERTY means 1197 W. Broad Street, Mansfield, Texas.

SECTION 2. PROGRAM ESTABLISHED

Pursuant to Section 380.001 of the Texas Local Government Code, a Program is hereby established to bring quality low cost senior residential units to the City of Mansfield for the reasons set forth in the recitals. This Agreement implements the Program.

SECTION 3. PIONEER'S OBLIGATIONS

A. Conformance to Law. Pioneer shall construct the Development in full conformance with the Approved Plans and in full conformance with state, federal, and local laws.

B. Period for Construction. Pioneer shall commence construction of the Development no later than April 30, 2018 and receive a certificate of occupancy for Pioneer Place no later than December 31, 2019.

C. Fees and Permits. Pioneer shall be solely responsible for the payment of all fees and for securing all permits necessary for the Development.

D. Ad Valorem Taxes. All ad valorem taxes for the Property are to remain current on all ad valorem taxes owed to the City or other taxing jurisdiction for the Property and the Development.

E. Inspection. The City shall have access at all reasonable times during normal business hours to inspect construction of the Development. Subject to Pioneer's contractual obligations and insurance requirements, the City, its agents and employees shall have reasonable access to the Property to inspect the Development to ensure that its construction is in compliance with this Agreement.

F. No Alteration of Development Regulations. This Agreement is not intended to and does not waive or alter any development requirement imposed by City ordinances, City development regulations, or other law.

G. Operation of Pioneer Place. Pioneer Place shall be operated and maintained in good condition (to include the exterior and all units) for the term of this Agreement.

SECTION 4. CITY PARTICIPATION

A. In General. In consideration of Pioneer's agreement to construct the Development in conformance with the requirements of this Agreement and subject to Pioneer's compliance with its duties and obligations in this Agreement, the City agrees to make Program Payments according to this Section 4.

B. Program Payments. Commencing February 1 of the year following the year in which a certificate of occupancy is issued by the City of Mansfield for Pioneer Place, the City will make Program Payments as follows:

1. Program Payments shall be paid to Pioneer annually in an amount equal to 50% of the Ad Valorem Taxes, no later than March 31.
2. Program Payments will terminate 10 years after commencement, or when the total Program Payments paid to Pioneer equal \$200,000.00, whichever occurs first.

SECTION 5. TERM

The Term of this Agreement shall begin on the Effective Date and shall terminate upon the complete performance of all obligations by the parties or upon the City's termination of this Agreement pursuant to Section 7 hereof.

SECTION 6. AUTHORITY; COMPLIANCE WITH LAW

A. Pioneer hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Pioneer and this Agreement constitutes the legal, valid and binding obligation of Pioneer, and is enforceable in accordance with its terms and provisions.

B. Pioneer represents and warrants that to the best of its knowledge during Pioneer's ownership of the Property (1) no landfill was deposited on or taken from the Property, (2) no construction debris or other debris (including, without limitation, rocks, stumps, and concrete) was buried upon the Property, and (3) no toxic waste or "hazardous substances" as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1988, or petroleum products and derivatives thereof, were deposited on the Property. Upon a request from the City, Pioneer shall submit to the City environmental reports commissioned by Pioneer.

C. Notwithstanding any other provision of this Agreement, Pioneer shall comply with all federal and state laws, and City ordinances in the development, construction and operation of the Development.

D. As required by Subchapter B of Chapter 2264 of the Texas Government Code, Pioneer certifies that to Pioneer's knowledge it does not and will not knowingly employ an undocumented worker. If after receiving the Program Payment set forth in this Agreement Pioneer is convicted under 8 USC Section 1324(a)(6), he shall repay the amount of the Payment (or portion that he has received) plus 10% interest not later than the 120th day after the date the City notifies Pioneer of the violation.

E. The City hereby represents and warrants to Pioneer during the term of this Agreement that:

1. The City is a home rule Texas municipal corporation and has the power to enter into this Agreement and take all actions required to authorize this Agreement and to carry out its obligations hereunder.
2. The City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement.
3. The City knows of no law, order, rule or regulation applicable to the City that would be contravened by, or conflict with, the execution and delivery of this Agreement and performance of the City's obligations hereunder.

SECTION 7. DEFAULT AND REMEDIES

A. In the event: (i) Pioneer fails to comply with the terms of this Agreement; (ii) Pioneer has delinquent ad valorem or sales taxes owed to the City (provided that Pioneer retains the right to timely and properly protest and/or contest any such taxes); (iii) upon the occurrence of any Event of Bankruptcy or Insolvency by Pioneer prior to substantial completion of the Development ; or (iv) Pioneer materially breaches any of the material terms and conditions of this Agreement, then Pioneer after the expiration of the notice and cure periods described herein, shall be in default of this Agreement. In the event of such a default, City shall give Pioneer written notice of such breach and/or default, and if Pioneer has not cured such breach or default within 30 days (or such longer time as agreed to by the City if Pioneer is using good faith efforts to cure such default, but in no event longer than 90 days) after receipt of such notice, the City may terminate this Agreement by written notice to Pioneer, and the City shall have no further obligation to Pioneer.

B. If a default shall occur and continue, after 30 days (or 90 days, as applicable) written notice to cure the default, the party not in default shall have the right to exercise any and all rights available to such party at law or in equity, including the right to seek equitable relief such as injunction or mandamus as to which the non-defaulting party may be entitled.

C. No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City Council of Mansfield.

SECTION 8. RIGHT OF OFFSET

City may, at its option, offset any amounts due and payable to Pioneer under this Agreement against any debt (including taxes) lawfully due to City, from Pioneer,

regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt in question has been reduced to judgment by a court.

SECTION 9. Intentionally Deleted.

SECTION 10. VENUE AND GOVERNING LAW

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

SECTION 11. FORCE MAJEURE

Performance of Pioneer's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Pioneer's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

SECTION 12. GIFT TO PUBLIC SERVANT OR TO PIONEER REPRESENTATIVE

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

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

SECTION 13. BINDING AGREEMENT; ASSIGNMENT

A. The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto. The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on Pioneer and each and every subsequent owner of all or any portion of the Property and shall be binding on all successors, heirs, and assigns of Pioneer which acquire any right, title, or interest in or to the Property, or any part thereof.

B. Any assignment of Pioneer's obligations under this Agreement must be in writing executed by the assignor and assignee, and shall not be permitted without the express written consent of the City; provided that the assignment of this Agreement as may be necessary to a lender of Pioneer in connection with the financing the Development by Pioneer shall be expressly permitted and no consent of the City to such assignment to a lender shall be required. Any assignment shall be contingent upon the assignee's agreement to comply with the provisions of this Agreement. Without City approval, Pioneer may assign the rights to receive the benefits set forth in Section 4, so long as Pioneer remains fully obligated to perform under this Agreement.

SECTION 14. INDEMNIFICATION

A. PIONEER EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF PIONEER OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF PIONEER'S PERFORMANCE OF THIS AGREEMENT. Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Pioneer and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

B. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City, their past, present and future officers, elected officials, directors, employees and agents of the City does not assume any responsibility to any third party in connection with Pioneer's construction of the Development.

SECTION 15. MISCELLANEOUS MATTERS

A. Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and

acknowledge that the successful performance of this Agreement requires their continued cooperation.

B. Agreement Subject to Law. This Agreement is made subject to the provisions of the Mansfield Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws.

C. Interpretation. This Agreement shall not be construed against the drafting party.

D. Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

E. Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

F. Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.

G. Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

If intended for City, to:

City of Mansfield
1200 E. Broad Street
Mansfield, Texas 76063
Attn: City Manager
Facsimile: (817) 473-1342

If intended for Pioneer Place, to:

Bethlehem's Pioneer Place, LP
1188 W. Broad Street
Mansfield, Texas 76063
Attn: Dr. Michael A. Evans, Sr.
Email: pastormichaelevans@gmail.com

With a copy to:

Taylor, Olson, Adkins, Sralla
& Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Attn: Betsy Elam
Facsimile: (817) 332-4740

Shackelford, Bowen, McKinley & Norton, LLP
9201 N. Central Expressway
Fourth Floor
Dallas, Texas 75231
Attn: John C. Shackelford
Email: jshack@shackelfordlaw.net

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

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

SECTION 16. EFFECTIVE DATE.

This Agreement shall become effective upon the execution of the Agreement by all parties.

EXECUTED and effective as of the _____ day of _____, 2018
by City, signing by and through its City Manager, duly authorized to execute same by
Resolution No. .

[Executed on the following page]

CITY OF MANSFIELD, TEXAS

By: _____
Clayton Chandler, City Manager

ATTEST:

By: _____
Tracy Norr, City Secretary

APPROVED AS TO FORM AND
LEGALITY:

By: _____
Elizabeth Elam, City Attorney

BETHLEHEM'S PIONEER PLACE, LP,
a Texas limited partnership

By: Bethlehem's Pioneer Place GP, LLC,
a Texas limited liability company,
its general partner

By: Historic West Mansfield Texas Community Development
Corporation,
a Texas non-profit corporation,
its sole member

By: _____
Name: _____
Title: _____

EXHIBIT “A”