

**SECOND AMENDMENT TO RIVERSTONE DRIVE  
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN 1179 JOINT VENTURE 1, LP AND  
THE CITY OF BRYAN, TEXAS**

This Second Amendment ("Amendment") to the Chapter 380 Economic Development Agreement entered into by and between the City of Bryan, Texas ("City") and 1179 Joint Venture 1, LP ("Developer") which was executed on the 29<sup>th</sup> day of May, 2014 ("Agreement").

WHEREAS, the City and the Developer desire to make a correction to the Agreement which is not a substantive amendment of its terms; and

**THEREFORE THE PARTIES AGREE AS FOLLOWS**

1. The second recital of the Agreement and the text of Exhibit "C" are hereby amended to replace the word "Riverstone" with the word "Stonebrier". Exhibit "C" is further amended to replace references to Phase 3 with Phase 1 and to replace references to Phase 4 with Phase 2.
2. All other terms and conditions set forth in the Agreement shall remain in full force and effect.

Executed to be effective on this the 16 day of Aug., 2016.

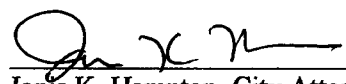
**CITY OF BRYAN**

  
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Jason P. Bienski, Mayor

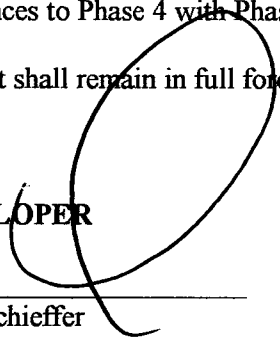
ATTEST

  
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Mary Lynne Stratta, City Secretary

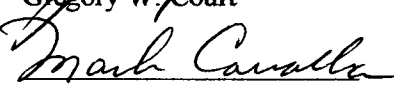
APPROVED AS TO FORM

  
\_\_\_\_\_  
Janis K. Hampton, City Attorney

**DEVELOPER**

  
\_\_\_\_\_  
Dean Schieffer

  
\_\_\_\_\_  
Gregory W. Court

  
\_\_\_\_\_  
Mark Carrabba

**RIVERSTONE DRIVE  
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN 1179 Joint Venture 1, LP. And  
THE CITY OF BRYAN, TEXAS**

This Chapter 380 Economic Development Agreement (“Agreement”) entered into by and between the CITY OF BRYAN, TEXAS, a Texas home rule municipal corporation, (“City”), and 1179 Joint Venture 1, LP (“Developer”), a Texas Limited Partnership created and operating under the laws of the State of Texas, collectively referred to as “Parties.”

**RECITALS**

**WHEREAS**, the Developer owns certain real property in the City, consisting of approximately 14.05 acres of land out of John Austin Survey, A-2, adjoining both sides of Riverstone Drive north of its intersection with FM 1179 in Bryan, Brazos County, Texas (hereinafter the “Property”);

**WHEREAS**, the Developer, desires to develop the Property into a zero lot line, patio home development known as Riverstone Phase 1 & 2 (Phase 1 and Phase 2 shall each be referred to as “Phase”) for single-family residential use (hereinafter “the Development” or “Project”);

**WHEREAS**, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

**WHEREAS**, in accordance with the provisions of Chapter 380 of the Texas Local Government Code, the City hereby establishes by way of this Agreement a program to provide incentives and financial assistance to the Developer to encourage the construction of a high-end, single family, development in the City of Bryan with each home having a minimum of 2,200 heated square feet, and with a Planned Development - Housing (PD-H) zoning designation allowing no more than two (2) unrelated individuals to reside in a home; in close proximity to green spaces and pedestrian trails designed to attract empty nesters, retirees, and young professionals to relocate to Bryan;

**WHEREAS**, the construction of a high-quality intergenerational patio home development in the City will meet a mid-range priced housing niche previously lacking in the City and will stimulate business and commercial activity within the City essential to continued economic growth;

**WHEREAS**, it is well established that the availability of quality housing stock and a variety of housing options encourages the relocation of businesses, attracts new businesses, and promotes the expansion of existing businesses to and within the City, all of which in turn promote economic growth, create jobs and increase property and sales tax revenues;

**WHEREAS**, subject to available funding and the conditions of this program, the City desires to provide an economic development incentive grant in an amount not to exceed \$217,614 for reimbursement to the Developer of qualified expenses pursuant Chapter 380 of the Texas Local Government Code (hereinafter referred to as “Reimbursement Amount”) to encourage the Developer to construct the Development in the City of Bryan, thereby attracting more retail businesses to the City, increasing real property values and tax revenue for the City, which will have both direct and indirect positive impact on, and provide an overall improvement/stimulus to, the local and state economy;

**WHEREAS**, by entering into this Agreement, the Developer acknowledges that the City is relying on Developer's representations about the Developer's ability to timely commence construction on the Project and that time is of the essence in the performance of this Agreement; and

**WHEREAS**, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Article III, Section 52-a of the Texas Constitution, Chapter 380, and other law, the Developer has agreed to comply with certain conditions for receiving those benefits, that are set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, the City and Developer agree as follows:

## **SECTION I CONSTRUCTION OF THE PROJECT**

1.1 The Project. The Project shall generally consist of the construction on the Property of a single-family residential patio home development, consistent with the Planned Development Housing (PD-H) Zoning Ordinance No. ~~2017~~ incorporated herein by reference, as if fully set forth herein.

1.2 Prior to acceptance of any public portion of the Project, the Developer shall deliver to City a final inspection certificate and one-year maintenance bond for the respective part of the Project, at which time such portions of the Project will become property of the City free and clear of any liens in favor of the Developer. Upon expiration of the maintenance bond, all warranties and other contract rights of the Developer concerning the design, acquisition, construction, installation, and inspection of the Project to which such bond pertains shall transfer and be assigned to the City without further act on the part of the Developer.

1.3 All infrastructure to be constructed as part of the Project shall be designed by a licensed professional engineer retained by Developer. The Developer's engineer shall submit plans to the City's engineer for review and approval prior to selecting a contractor. The design of the Project shall be in accordance with the requirements and at the direction of the City Engineer.

1.4 All designs and specifications for the Project shall comply with the requirements of the City, including but not limited to the Infrastructure Design Manual, and shall be approved by the Site Development Review Committee (SDRC).

1.5 Developer shall not be entitled to reimbursement of any costs for the Project for which the City does not approve design and specification.

1.6 Developer will obtain, at its own expense, any and all necessary subdivision plats, permits, licenses, variances, and approvals that are necessary to construct the Project, including any environmental controls. Developer shall satisfy all permitting requirements, including but not limited to detention and building permitting requirements.

## **SECTION II PERFORMANCE CRITERIA**

2.1 The Chapter 380 Grant and City's payment to Developer of the Reimbursement Amount is conditioned upon and subject to the Developer complying with the requirements of PD-H Zoning Ordinance No. ~~2017~~, and the following requirements, hereinafter referred to as "Performance Criteria":

A. Developer shall submit a complete final plat of the property within twelve (12) months of execution of this Agreement. No building permit shall be issued until the final plat is filed with real property records at Brazos County.

B. Developer shall design and build the Project in accordance with the final plat and approved site plan.

C. Developer shall final plat a minimum of 1.02 acres of green space and common area, and prior to filing the final plat, Developer shall be required to create a Home Owners Association (HOA) to maintain the green space.

D. Developer shall construct fences as required in PD-H Zoning Ordinance No. ~~2017~~ Construction of the fences must be completed as required before any Reimbursement Amounts shall be paid to Developer by City.

### SECTION III PROJECT COSTS

3.1 Project Costs. Developer shall advance payment of all Project Costs. The term "Project Costs" shall mean the sum of all of the costs and expenses paid, whether under or outside the awarded construction contracts, for the performance of the design and construction of the Project.

Exhibit "A", attached hereto and incorporated herein by reference, lists categories of infrastructure for which Developer may be reimbursed by City (hereinafter "Qualified Expenses").

### SECTION IV INCENTIVES

4.1 Reimbursement. Developer shall be reimbursed for each Qualified Expense upon completion of said Qualified Expense. Subject to compliance with the Performance Criteria, and upon final completion of construction of a component of the Project that is a Qualified Expense; receipt of written certification by Developer's engineers and contractors, and approval and acceptance by the City Engineer, when applicable; and upon receipt of invoices paid by Developer relative to the Qualified Expense; City shall review and approve all reasonable invoices and City shall be obligated to reimburse Developer one hundred percent (100%) of costs actually and reasonably incurred by Developer in one or more of the categories of Qualified Expenses listed on Exhibit A (the "Reimbursement Amount"), not to exceed a total amount of Two Hundred Seventeen Thousand, Six Hundred Fourteen and No/100 Dollars ( \$217,614.).

4.2 Place for Payment Payments made on the Reimbursement Amount shall be made payable to Developer, and shall be sent to the designated office and place for notices set forth in paragraph 8.3 below.

4.3 Right to Inspect Books and Records. Developer shall be subject to audit (by City or its designee) during construction of the items on Exhibit "A", of information on any and all expenditures submitted for reimbursement.

4.4 Funding. City shall provide payment of the Reimbursement Amount to Developer from any source of revenue lawfully available to City. Payment of the Reimbursement Amount shall be subject to annual appropriation.

**SECTION V  
INDEMNIFICATION AND INSURANCE**

5.1 Indemnification. DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD CITY (INCLUDING CITY'S AGENTS, SERVANTS, EMPLOYEES, OFFICERS AND DIRECTORS) HARMLESS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, FINES, COSTS, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ACTUAL AND REASONABLE ATTORNEYS FEES, REASONABLE INVESTIGATIVE COSTS, COURT COSTS, ALL OTHER DEFENSE COSTS AND INTEREST, AND ALL OTHER SUMS WHICH CITY MAY PAY OR BECOME OBLIGATED TO PAY ON ACCOUNT OF ANY CLAIM OR ASSERTION OF LIABILITY ARISING OR ALLEGED TO HAVE ARISEN OUT OF ANY ACT OR OMISSION OF DEVELOPER (INCLUDING DEVELOPER'S AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AND SUBCONTRACTORS) IN CONNECTION WITH THE PERFORMANCE OF ANY OF THE PROJECT, UNLESS SUCH CLAIM OR LIABILITY ARISES OUT OF ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF CITY OR ITS AGENTS, SERVANTS, EMPLOYEES, INVITEES, OR CONTRACTORS. DEVELOPER SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY OF CITY.

5.2 Insurance. Developer or the general contractor which performs any portion of the Project to be conveyed to City shall, at its own expense, maintain or cause to be maintained in full force and effect during the course of this Agreement, the following types of insurance coverage under the stated amounts:

a. Comprehensive Commercial General Liability insurance for protection from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from Developer/Contractor's operations under this Agreement. Coverage shall be in an amount not less than \$1,000,000.00 per occurrence. This requirement must also be met by subcontractors unless Contractor's policy covers the subcontractor.

b. Business Auto Liability insurance with a limit of not less than \$1,000,000.00 per accident and providing coverage for all owned, non-owned, and hired automobiles. This requirement must also be met by subcontractors unless Contractor's policy covers the subcontractor.

c. Worker's Compensation Insurance in the statutory limits of not less than \$500,000.00 per accident and \$500,000.00 by disease. This requirement may be waived if Texas State law does not require Contractor to maintain such insurance. This requirement must also be met by subcontractors engaged by Contractor unless an applicable exception exists in state law or Contractor's policy covers the subcontractor.

d. Professional liability insurance is required with a limit of not less than \$1,000,000.00. This section also applies to Contractor's architect and any other design professional required by state law to be licensed by the State unless the Contractor's policy covers the subcontractor.

The Developer or such Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. The annual aggregate limit shall not be less than the highest "each occurrence" limit. The Developer or such Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance program carried by the City. When required by the insurer, or should a policy condition not permit Developer or such Contractor to enter into a pre-loss agreement to

waive subrogation without an endorsement, then Developer or such Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This waiver of subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids covers should Contractor enter into such an agreement on a pre-loss basis. Any deductibles or self-insured retentions must be declared. The Developer or such Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of same.

Such policy or policies shall provide, among other things, that the insurer specifically recognize and insure the obligations undertaken by Developer or such contractor or subcontractor pursuant to this Agreement or the applicable construction contract and shall name the City as an additional insured. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees. Developer and each contractor and subcontractor will deliver to City a Certificate of Insurance evidencing the existence in force of such policy or policies of insurance, executed by a duly authorized representative of such insurer submitted on the ACORD form with all endorsements included.

## **SECTION VI DEFAULT, RECAPTURE, AND TERMINATION**

6.1 Defaults. It shall be an event of default under this Agreement if Developer fails to comply with any of the Performance Criteria. If Developer is in default in the performance of this Agreement, the City may either terminate this Agreement or allow Developer to cure the default as provided below. The CITY'S right to terminate this Agreement for Developer's default is cumulative of all rights and remedies which exist now or in the future.

6.2 Default by Developer occurs if: (1) Developer fails to comply with any of the Performance Criteria; (2) Developer fails to perform any of its duties under this Agreement; (3) Developer becomes insolvent; (4) all or a substantial part of Developer's assets are assigned for the benefit of its creditors; (5) a receiver or trustee is appointed for Developer; or (6) if Developer fails to sale all Lots in the Development within seven (7) years from the date the Plat of the Development is filed. If a default occurs, the City may, but is not obligated to, deliver a written notice to Developer describing the default and the termination date. The City, at its sole option, may extend the termination date to a later date. If the City allows Developer to cure the default and Developer does so to the City's satisfaction before the termination date, then the termination is ineffective. If Developer does not cure the default before the termination date, then the City may terminate this Agreement on the termination date, at no further obligation of the City.

6.3 To effect final termination, the City must notify Developer in writing. After receiving the notice, Developer shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this account.

Upon termination of this Agreement for Developer's default, City shall not be responsible for any reimbursement required hereunder, and Developer shall pay as liquidated damages to the City within thirty (30) days of such uncured default the entire Reimbursement Amount previously paid to the Developer ("Recapture"), unless the City and Developer agree to an amendment to this Agreement in lieu of such termination. Notwithstanding the foregoing, the amount of Recapture shall be limited to the amount of the Reimbursement Amount received by Developer prior to a default.

6.4 Force Majeure. The duties of Developer to observe or perform any of the provisions of this Agreement on its part to be performed or observed, shall be excused for a period equal to the period of prevention, delay or stoppage due to causes beyond the control of Developer by reason of strikes, civil riots, war, invasion, fire or other casualty, or Acts of God ("Force Majeure").

## SECTION VII TERM

7.1 Term. The term of this Agreement shall be for a period of eleven (11) years after execution of this Agreement or four (4) years after completion of the Project, whichever is earlier. The City's obligation to reimburse any sums remaining unpaid on such date shall lapse and this portion of the Agreement shall terminate and be of no further force and effect.

## SECTION VIII MISCELLANEOUS PROVISIONS

8.1 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Developer may not assign its rights or delegate its responsibilities under this Agreement without the written consent of the City.

8.2 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither the City, nor its past, present or future officers, elected officials, employees nor agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

8.3 Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

**If to City:** City of Bryan  
Attn: City Manager  
P.O. Box 1000  
Bryan, Texas 77805

**If to Developer:** 1179 Joint Venture 1, LP  
2103 Tabor Road  
Bryan, TX 77803

Either party may designate a different address at any time upon written notice to the other party.

8.4 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

8.5 Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in

the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

8.6 Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

8.7 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

8.8 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

8.9 No Waiver. City's failure to take action to enforce this Agreement in the event of DEVELOPER'S default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

8.10 Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

8.11 Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.


8.12 Originals. This Agreement may be executed in several counterparts, by separate signature pages, and/or by facsimile, each of which may be deemed an original, and all of such counterparts and/or separate signature pages together shall constitute one and the same Agreement.

Executed on this the 29 day of May, 2014, and effective upon second reading of PD-H Zoning Ordinance No. 2047

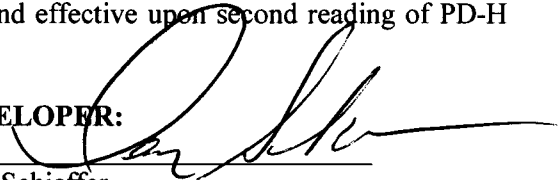
**CITY OF BRYAN:**

  
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Jason P. Bienski, Mayor

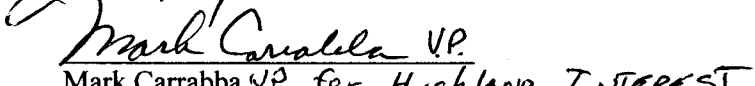
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**DEVELOPER:**

  
\_\_\_\_\_  
Dean Schieffer

  
\_\_\_\_\_  
Gregory W. Court

  
\_\_\_\_\_  
Mark Carrabba V.P. for Highland INTEREST

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Janis K. Hampton, City Attorney



## Exhibit "A"

### Categories of Infrastructure

- Public Water
- Public Sewer
- Public Storm Sewer
- Brick/Stone Fencing along State Highways
- Wrought Iron Fencing along City Streets

Exhibit "B"

**1179 JOINT VENTURE  
2103 TABOR ROAD BRYAN, TX 77803**

City of Bryan,

We have completed a cost estimate for the 1179/Riverstone Drive fence, and the expected total cost of the fence will be \$268,244. The portion of the fence that the City of Bryan would be responsible for would not to exceed \$217,614. This is for the difference between the rock fence on 1179 and the wrought iron/stone columns along Riverstone Drive compared to a cedar fence along both road ways.



Grant Carrabba

979-229-5151

Exhibit "C"

