

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
TWIN CITY PROPERTIES MANAGEMENT, INC. AND
THE CITY OF BRYAN, TEXAS**

This Agreement entered into by and between **THE CITY OF BRYAN, TEXAS**, a Texas home rule municipal corporation, acting herein by and through its duly elected City Council, ("**City**"), and **ONEY HERVEY PROPERTIES L.L.C.**, a limited liability company incorporated and operating under the laws of the State of Texas, ("**Developer**"); collectively referred to as "**Parties.**"

WITNESSETH:

WHEREAS, Developer owns or controls several apartment complexes and homes located at Suber PH 5 Addition, Block 1, Lots 7-9, Zeon Phillips Addition, Block 10, Lots 3, 13-16, Suber PH 3 Addition, Block 1, Lots 5-6 and Suber PH 4 Addition, Block 1, Lots 5-6, Zeno Phillips Addition, Block 10, Lot 3.1, and Suber PH 1 Addition, Block A, Lots 2-8 within the incorporated boundaries of the City ("**Properties**") which are more particularly described by the Tax Appraisal Records attached to this agreement as Exhibit "A;" and

WHEREAS, the Properties are located in an economically depressed area of the City, and in their current condition pose economic, health, and public safety risk to their neighbors and to the citizenry as a whole; and

WHEREAS, the Developer began purchasing property in the area and communicated with owners in order to implement a plan where by the Developer will invest significant sums of money to renovate and rehabilitate the Properties; and

WHEREAS, Chapter 380 of the Texas Local Government Code permits a city to create a program that will expend funds in the form of grants or loans for the purpose of stimulating economic development within the limits of the city; and

WHEREAS, the City Council has determined that the City has a vested interest in assisting the Developer with the improvement of the Properties for public safety as well as economic reasons; and

WHEREAS, the City Council finds that the contemplated use of the Properties, the contemplated improvements to the Properties, and the other terms set forth in this Agreement are consistent with encouraging economic development within the City and it is in the City's best interest to enter into this agreement with the Developer for the purpose of assisting with the rehabilitation and renovation of the Properties; and

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

A. REIMBURSEMENT

1. The City agrees to reimburse the Developer a portion of the cost of the rehabilitation and renovation of the Properties, conditioned upon an increase in the appraised value of the Properties. The reimbursement payments are made on an annual basis, and will be equal to the Properties tax collected on any increased value in the Properties, as determined by the Brazos County Appraisal District ("BCAD"). For the purposes of this Agreement, the appraisal by BCAD is binding.
2. As of the effective date of this Agreement, and as shown in Exhibit "A," the Properties' cumulative appraised value is \$2,737,020.00 ("Base Value"). For a given year, the increased value of the Properties is determined by subtracting the Base Value from the then current appraised value ("Increased Value"). Annual reimbursement payments are calculated to be equal to 100% of the Properties tax collected by the City on any Increased Value in the Properties.
3. Reimbursement payments under this Agreement shall not be made unless the Increased Value is at least \$1,000,000.00 (i.e. the Properties are appraised for a cumulative value of at least \$3,737,020.00). Upon a determination by the Brazos County Appraisal District that the required increase in value has occurred, the Developer is eligible for reimbursement. Each year, the Developer will submit a request for reimbursement along with copies of tax receipts showing that taxes have been paid and also showing the then current appraised value of the Properties. Reimbursement payments can be made within thirty days following receipt of the request.
4. The City shall not make any payments to Developer if there are any outstanding taxes owed to the City for the preceding year's taxes or if there are any outstanding liens on the Properties in the City's favor. And payments to Developer are contingent upon annual appropriation for same in the City's budget.
5. Developer agrees to pay all ad valorem taxes and assessments owed to City prior to such taxes and/or assessments becoming delinquent. Developer shall have the right to contest in good faith the validity or application of any such tax or assessment and shall not be considered in default hereunder so long as such contest is diligently pursued to completion. In the event that Developer contests such tax or assessment, all uncontested taxes and assessments shall be promptly paid to City prior to delinquency. If Developer undertakes any such contest, it shall notify City and keep City apprised of the status of such contest. Should Developer be unsuccessful in any such contest, Developer shall promptly pay all taxes, penalties and interest resulting therefrom.

B. DEFAULT & TERMINATION

6. The Developer is in breach of this Agreement if he
 - a. fails to complete the Improvements in accordance with this Agreement;

- b. has delinquent ad valorem or sales taxes owed to the City (provided the Developer retains its right to timely and properly protest such taxes or assessment); or
 - c. becomes bankrupt or insolvent.
7. Upon breach by Developer of any obligations under this Agreement, the City shall notify the Developer in writing. Developer shall have thirty days from receipt of the notice in which to cure any such breach. If the breach cannot reasonably be cured within a thirty day period, and the Developer has diligently pursued such remedies as shall be reasonably necessary to cure such breach, then the City may extend the period in which the breach must be cured.
8. No reimbursement payments shall be made until any breach is cured. If the breach is not timely cured, the City may terminate this agreement.
9. The term of this agreement is for seven years, beginning from the date the agreement is signed by all parties, unless one of the following occurs:
 - a. An event of default has occurred, remains uncured during the thirty day period provided above, and the non-defaulting party signifies its intent to terminate the agreement, which termination is effective immediately;
 - b. A party elects to terminate this Agreement (which occur at any given time) by giving the other party at least sixty days written notice; or
 - c. The Developer has been paid the cumulative sum of \$80,000.00 by the City in accordance with the terms of this Agreement.

C. MISCELLANEOUS

10. **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 shall not assign this Agreement without the written approval of the City Council. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section. If Developer assigns this Agreement without written approval of the City Council, this Agreement shall terminate immediately and the partial abatement of taxes on personal Properties and equipment provided for herein shall cease from the date such unauthorized assignment occurred.
11. **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.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. Notices. City and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

CITY
City of Bryan, City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

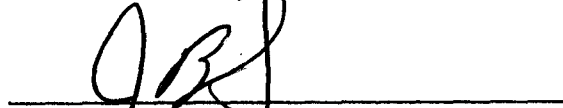
DEVELOPER
Oney Hervey Properties L.L.C.
1507 South College Ave.
Bryan, Texas 77801

18. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
19. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
20. Duplicate Originals. The parties hereto have executed this Agreement in duplicate originals, each of equal dignity. Each party has stated the execution date below the signature of its authorized representative. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

ATTEST:


Mary Lynne Stratta, City Secretary

CITY OF BRYAN, TEXAS


Jason P. Bienski, Mayor

APPROVED AS TO FORM:


Janis K. Hampton, City Attorney

ONEY HERVEY PROPERTIES L.L.C.


Douglas J. Pederson, President