

SECOND AMENDED PERFORMANCE AGREEMENT
BETWEEN THE BURLESON 4A ECONOMIC DEVELOPMENT
CORPORATION AND YUKON

This Second Amended Performance Agreement (the "Second Amended Agreement") is entered into as of _____ (the "Effective Date") by and among The Burleson 4A Economic Development Corporation, a Texas municipal development corporation (the "EDC") created pursuant to the Development Corporation Act of 1979, as amended, codified as Subtitle C1 of Title 12 of the Texas Local Government Code (the "Act") located in the City of Burleson (the "City"), Counties of Johnson and Tarrant, State of Texas, by and through its President, and Project Yukon Burleson, LLC a Delaware limited liability company ("YUKON"). In consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1.
DEFINITIONS

- 1.01 "Affiliate" means YUKON, Burleson Cold Storage, LP, and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, YUKON.
- 1.02 "Agreement" means collectively this Second Amended Agreement, the First Amendment and the Original Agreement, as defined in Section 2.07.
- 1.02 The terms "the Act," "First Amended Agreement," "Effective Date," "City," "YUKON," and "EDC," shall have the meanings provided above.
- 1.03 "Capital Investment" means and shall include all costs incurred relating to the acquisition of the Property and construction of the Development, including the actual construction costs, and other costs of all buildings, structures, improvements, infrastructure, deposits for fabrication or materials, fixed machinery and equipment, site development costs including demolition, grading and environmental abatement; engineering fees, architectural fees, legal fees and other professional fees; construction financing costs of the Development and tangible personal property.
- 1.04 "Certificate of Occupancy" means the document issued by the City of Burleson certifying the Development is in compliance with applicable building codes and other laws and indicating it to be a condition suitable for occupying.
- 1.05 "Development" means at least 250,000 square foot office, cold storage and distribution facility to be occupied and operated by YUKON or an Affiliate, as YUKON's or an Affiliate's cold storage and distribution center.

- 1.06 “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.
- 1.07 “Land Sale Contract” means the contract executed between YUKON and the [Burleson Economic Development Corporation] dated September 4, 2019 for the purchase of the Property.
- 1.08 “Project” means incentives offered by the EDC to encourage YUKON or an Affiliate to locate the Development in Burleson.
- 1.09 “Property” means a 43.51 acre tract known as Lot 1R, Block 1, of the HighPoint Business Park Addition located at the corner of HighPoint Parkway and South Burleson Boulevard, Burleson, Texas, more fully described in the attached Exhibit A.

ARTICLE 2 RECITALS

- 2.01 YUKON or an Affiliate seeks to acquire the Property, and YUKON or an Affiliate proposes to construct and operate the Development on the Property.
- 2.02 The EDC has determined and found that the Project will provide incentives for the Development, will create jobs as defined by Section 501.002(12) of the Act, and that the expenditures of the EDC set forth in this Agreement are suitable or required for the development of a new industrial enterprise, and fall within the definition of a “project” as defined in Section 501.101 of the Act.
- 2.03 The EDC, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to City as a result of the Development being located in the City, desires to have YUKON or an Affiliate construct the Development improvements and operate the Development in the City.
- 2.04 The Development will increase the taxable value in the City and will directly and indirectly result in the creation of additional jobs throughout the City and the value of the benefits of the Development is anticipated to outweigh the amount of expenditures required of the EDC by the Project under this Agreement.
- 2.05 The EDC, to encourage the construction and operation of the Development on the Property, desires to provide incentives as set forth herein which are necessary in order for YUKON to locate the Development in the City and operate as hereinafter set forth, to aid and promote economic development in the City.
- 2.06 The EDC has found the Development will contribute to an increase in economic development in the City.

- 2.07 On September 16, 2019 the EDC and YUKON entered into a Performance Agreement Between the Burleson 4A Economic Development Corporatoin and Yukon (the "Original Agreement") and on February 17, 2020 the EDC and Yukon entered into a First Amendment to the Original Agreement to effectuate these goals, and have now determined that the Agreement should be revised by extending certain performance dates, identify an Affilate, and revising Section 5.01
- 2.08 The Property is not owned or leased by any member of the Burleson 4A Economic Development Corporation, Burleson City Council, or any member of the City Planning and Zoning Commission.

ARTICLE 3. **AUTHORIZATION**

The EDC finds and determines that this Agreement is authorized and governed by the Act.

ARTICLE 4. **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate on December 31, 2026.

ARTICLE 5. **COVENANTS OF YUKON**

- 5.01 Covenants Regarding YUKON Development and Operations. In order to receive EDC contributions, YUKON or an Affiliate shall do all of the following during the term of this Agreement:
- (A) Execute the Land Sale Contract with City of Burleson for 43.51 acres at a price of \$1.00/ft (\$1,873,080) by September 4, 2019, for the Property.
 - (B) Complete closing of the purchase of the Property by June 30, 2020.
 - (C) Building design and site plan must be acceptable to Burleson City Council.
 - (D) Issuance of the building permit to construct the Development, groundbreaking and commencement of sitework, and demonstrate an initial Capital Investment into the Project of at least \$2,000,000.00 excluding the cost to purchase the property by December 31, 2020
 - (E) Receive a Certificate of Occupancy for the Development no later than February 28, 2022.
 - (F) Development shall have a minimum Capital Investment of \$35 million on or in connection with the Property for the duration of this Agreement.

- (G) Offer a tenant improvement package to build out 7,500 square feet of office space within the building.
 - (H) Be responsible for construction and maintenance of all on-site improvements for the Property and Development.
 - (I) Be solely responsible for the design and construction of the Development, and comply with all subdivision regulations, building codes and other ordinances of the City applicable to the Development.
 - (J) Remain current and paid on all property taxes accruing from and after the closing date under the Land Sale Contract, subject to appeal rights in accordance with law and subject to a right to cure any delinquency.
 - (K) Have a goal of employing at least forty (40) FTE's.
- 5.02 If YUKON is delayed in performing any of its covenants described above by force majeure (as defined below), then the deadlines for YUKON's performance of those covenants shall be extended an equal time period.
- 5.03 Within 30 days following the receipt of a Certificate of Occupancy, YUKON or an Affiliate shall provide written verification to the EDC that the Capital Investment made by YUKON or an Affiliate for the Development meets or exceeds the requirements set forth in of this Agreement. YUKON agrees that City shall not be required to make payments under Section 6.02(C) of this Agreement until such time that YUKON or an Affiliate provides such written verification. The EDC may request, and YUKON hereby agrees that it or an Affiliate will permit reasonable review of information (at no cost, expense or liability to YUKON or Affiliate) that permits the EDC to verify that the Capital Investment made by YUKON or an Affiliate for the Development meets or exceeds the requirements of this Agreement excluding (i) financial information of YUKON or an Affiliate not related to the Development, and (ii) proprietary information.
- 5.04 YUKON or an Affiliate shall provide written verification to the EDC that the Capital Investment made by YUKON or an Affiliate for the Development meets or exceeds the requirements set forth in 5.01(D) of this Agreement. YUKON agrees that City shall not be required to discharge the repurchase right as set forth in the Deed dated _____ until such time that YUKON or an Affiliate provides such written verification. The EDC may request, and YUKON hereby agrees that it or an Affiliate will permit reasonable review of information (at no cost, expense or liability to YUKON or Affiliate) that permits the EDC to verify that the Capital Investment made by YUKON or an Affiliate for the Development meets or exceeds the requirements of this Agreement excluding (i) financial information of YUKON or an Affiliate not related to the Development, and (ii) proprietary information.

ARTICLE 5.5
REGULATIONS REGARDING BUILDING MATERIALS

ARTICLE 6.
INCENTIVES PROVIDED BY THE EDC TO YUKON

- 6.01 Subject to and contingent upon YUKON or an Affiliate complying with its duties and obligations under this Agreement, EDC agrees that, subject to the terms and conditions contained herein, EDC shall pay the contributions and benefits according to the schedule set forth in this Article.
- 6.02 Provided YUKON or an Affiliate is in compliance with the terms and provisions of this Agreement and in accordance with the terms of the Land Sale Contract, EDC will make cash grant payments to YUKON or an Affiliate in accordance with the following benchmarks:
- (A) A cash grant in the amount of Three Hundred Twelve Thousand One Hundred and Eighty Dollars and no cents (\$312,180.00) shall be paid to YUKON or an Affiliate within 30 days after the closing of the Land Sale Contract.
 - (B) A cash grant in the amount of Three Hundred Twelve Thousand One Hundred and Eighty Dollars and no cents (\$312,180.00) shall be paid to YUKON or an Affiliate within 30 days after Issuance of the building permit to construct the Development, groundbreaking and commencement of sitework, and demonstrate an initial Capital Investment into the Project of at least \$2,000,000.00.
 - (C) A cash grant in the amount of Three Hundred Twelve Thousand One Hundred and Eighty Dollars and no cents (\$312,180.00) shall be paid to YUKON or an Affiliate within 30 days after YUKON or an Affiliate receives its Certificate of Occupancy, and provides proof of the Capital Investment as required by Section 5.03 of this Agreement.
 - (D) If any of the benchmarks set forth in this Subsection 6.02 (A), (B), or (C) are not timely performed (subject however to Section 5.02), and not excused or extended by the EDC or by the provisions of this Agreement as provided herein, YUKON and Affiliates waive the payment of the amount specified in such Subsection. This Section shall survive termination of this Agreement.

ARTICLE 7.
AUTHORITY; COMPLIANCE WITH LAW

- 7.01 YUKON and Affiliate hereby represent and warrant to the City that each 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 YUKON and Affiliate, and this Agreement constitutes the legal, valid and binding obligation of YUKON and Affiliate, and is enforceable in accordance with its terms and provisions.

- 7.02 Notwithstanding any other provision of this Agreement, YUKON and Affiliate shall comply with all applicable federal, state, and local laws.
- 7.03 During the term of this Agreement, YUKON and Affiliate agree not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), YUKON or an Affiliate shall repay the amount of the EDC contribution(s) received by YUKON or an Affiliate for the period of time of such violation within 120 business days after the date YUKON or an Affiliate is notified by the City of such conviction (provided all appeals have been exhausted), plus interest at the rate the City is paying on the most recent issuance of bonded indebtedness prior to YUKON's or an Affiliate's violation of this Section.

ARTICLE 8. DEFAULT AND REMEDIES

- 8.01 Default by YUKON or an Affiliate. In the event: (i) YUKON or an Affiliate fails to fulfill its obligations of this Agreement; (ii) YUKON or an Affiliate has delinquent ad valorem or sales taxes owed to the City accruing from and after the closing date under the Land Sale Contract, provided that YUKON or an Affiliate retains the right to timely and properly protest and/or contest any such taxes; or (iii) YUKON or an Affiliate materially breaches any of the material terms and conditions of this Agreement, then YUKON or an Affiliate 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, the EDC shall give YUKON or an Affiliate written notice of such breach and/or default ("Notice"), specifying with particularity the nature of any breach or default (each, a "Default"), and if YUKON or an Affiliate has not cured such Default within 90 days after receipt of such Notice, the EDC may terminate this Agreement by written notice to YUKON or an Affiliate, and the EDC shall have no further obligation to YUKON. YUKON or an Affiliate shall not be liable to the EDC for any alleged consequential damages, and the EDC hereby waives any rights or remedies available that are related to consequential damages at law or in equity. Notwithstanding the above, if such Default cannot be cured by reasonably diligent efforts within ninety (90) days of the Notice, then YUKON or an Affiliate shall have a additional ninety (90) day extensions to cure the breach so long as YUKON or an Affiliate promptly initiates and diligently and continuously attempts to cure the same. This Section shall survive termination of this Agreement.
- 8.02 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 EDC and YUKON or Affiliate.

ARTICLE 9.
VENUE AND GOVERNING LAW

This Agreement is fully performable in Johnson and Tarrant Counties, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson or Tarrant Counties, Texas. To the extent permitted by law, the substantive 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 courts in Johnson and Tarrant Counties, Texas.

ARTICLE 10.
FORCE MAJEURE

Performance of YUKON's or an Affiliate's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and YUKON's or an Affiliate'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, inability to obtain (or delay in obtaining) any permit and/or legal authorization (including engineering approvals by any governmental entity), inability to obtain (or delay in obtaining) governmental approvals and permits, 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.

ARTICLE 11.
GIFT TO PUBLIC SERVANT OR TO YUKON REPRESENTATIVE

11.01 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.

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

ARTICLE 12.
ASSIGNMENT

Neither YUKON nor an Affiliate may assign any part of this Agreement without consent or approval by the EDC (which shall not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, the consent or approval by the EDC shall not be required for an assignment of this Agreement (i) to any other Affiliate of YUKON or an Affiliate; (ii) in connection with a sale by YUKON or an Affiliate of the Property, provided that following such sale, YUKON or an Affiliate shall continue to occupy the Development as a owner or tenant of the Property, or (iii) in connection with a sale by Yukon to Affiliate, Burleson Cold Storage, LP, and that any such assignee assume all of YUKON's duties and obligations under this Agreement.

ARTICLE 13.
INDEMNIFICATION

- 13.01 YUKON AND EACH AFFILIATE 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, TO THE EXTENT CAUSED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF YUKON OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT. This provision is solely for the benefit of the City, and its officers and employees, and is not intended to create or grant any rights, contractual or otherwise, in or to any other person. This Section shall survive termination of this Agreement.
- 13.02 Nothing in this Agreement shall be construed as waiving any governmental immunity available to the City under state law.
- 13.03 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 (including its 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 YUKON's construction of the Development.

ARTICLE 14.
MISCELLANEOUS MATTERS

- 14.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make commercially reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation. If any date for the performance of any matter under this Agreement (including the date for the sending of a Notice and the date on which a Notice is deemed to have been received) falls on a Saturday, Sunday, or legal holiday observed by national banks in the counties where the Property is located, then such date shall be extended to the next calendar day that is not a Saturday, Sunday, or such legal holiday.
- 14.02 Agreement Subject to Applicable Law. This Agreement is made subject in accordance with the Burluson Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws, violation of which shall constitute a default of this Agreement.

- 14.03 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.
- 14.04 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.
- 14.05 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.
- 14.06 Complete Agreement. This Agreement, together with the Land Sale Contract and that certain Tax Abatement Agreement between the City and YUKON or an Affiliate entered into contemporaneously with this Agreement (the "Tax Abatement 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.
- 14.07 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.

YUKON:

Anthony M. Rinaldi
Saxum Real Estate
Managing Partner
359 Springfield Ave
Summit, NJ 07901
Telephone: (973) 947-0051
Email: arinaldi@saxumre.com

With a copy to: Michael Ochs, Esq.
339 Jefferson Road
Parsippany, New Jersey 07054
Telephone: (201) 321-7816
Email: mochs@mochslaw.com

and to: J. Ray Oujesky
Kelly Hart & Hallman LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 878-3556
Email: ray.oujesky@kellyhart.com

EDC: Burleson 4A Economic Development Corporation
141 W Renfro Street
Burleson, Texas 76028
Attn: Bryan Langley,
City Manager
Telephone: (817) 426-9613
Email: blangley@burlesontx.com

With a copy to: Betsy Elam
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place
Suite 200
Fort Worth, Texas 76107
Telephone: (817) 332-2580

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

14.09 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.

[Signature pages to follow]

EXECUTED on the respective dates of acknowledgement, to be effective as of the Effective Date first set forth above.

**BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION,
a Texas municipal development corporation**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS
COUNTY OF JOHNSON

This instrument was acknowledged before me on _____, 2019 by _____, known personally by me to be the _____ of Burleson 4A Economic Development Corporation, on behalf of said corporation.

[Notary Seal]

Notary Public, State of Texas

APPROVED AS TO FORM AND LEGALITY:

Betsy Elam, Legal Counsel

**YUKON,
a Delaware limited liability company**

By: _____
Name: Anthony M. Rinaldi
Title: Managing Partner
Date: _____

Exhibit A
Legal Description of Land