



**LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS**

Monday, January 10, 2022 - 6:00 p.m.

**REGULAR MEETING
100 West Eldorado Parkway
Town Hall
Second Floor, Glass Conference Room**

AGENDA

1. **Roll Call and Call to Order** of Regular Meeting.
Identification of Quorum and call to order.
2. **Discussion and Action** to approve the Minutes from December 13th, 2021 Regular Meeting.
(Jennette Espinosa, Executive Director)
3. **Discussion and Action** to approve the Eighth Amendment to the Ground Lease Purchase Agreement between Little Elm EDC and Little Elm Hula Hut, LLC. (Jennette Espinosa, Executive Director)
4. **Discussion and Action** to approve the First Amendment to the Performance Agreement between Little Elm EDC and Hurtado Barbecue, LLC. (Jennette Espinosa, Executive Director)
5. **Director's Report:** Discuss, Update, and Action, if needed, regarding Project, Policies, Events, Activities, and Calendar pertaining to EDC. (Jennette Espinosa, Executive Director)
6. **Executive Closed Session of the Board of Directors.**
The Little Elm EDC will now hold a Closed Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:
(A) Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business prospect.
7. **Reconvene into Open Session** Take any action related to the Executive Session.

8. Adjournment.

Respectfully,

Jennette Espinosa

Executive Director

This is to certify that the above notice was posted on www.littleelm.org, Town of Little Elm website, under Agendas and Minutes prior to 5:00 p.m. this 7th day of January, 2022.



Date: 01/10/2022
Agenda Item #: 2.
Department: Economic Development Corporation
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve the Minutes from December 13th, 2021 Regular Meeting. (Jennette Espinosa, Executive Director)

RECOMMENDED ACTION:

Staff recommends approval of the Minutes as presented.

Attachments

EDC Minutes from December 13 2021

DRAFT



**MINUTES
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION
100 W. Eldorado Parkway**

**REGULAR MEETING
Monday, DECEMBER 13, 2021
6:00 PM**

Present: Ken Eaken, President; Michel Hambrick, Vice President; Taylor Girardi, Treasurer; Jack Gregg, Secretary; Michael McClellan, Council Liaison; Marce E. Ward, Board Member; Jeremy Bolden, Board Member

Staff Present: Jennette Espinosa, EDC Executive Director
Natasha Roach, EDC Assistant Director
Jennifer Eusse, Development Specialist
Jeff Moore, EDC Attorney
Jason Barth, EDC Accountant

1. Roll Call and Call to Order of Regular Meeting. Meeting was called to order at **6:00 pm** by President, Ken Eaken.
Identification of Quorum and call to order.
2. **Discussion and Action** to approve the Minutes from November 15th, 2021 Regular Meeting, (Jennette Espinosa, Executive Director)

Motion by Council Liaison Michael McClellan, seconded by Treasurer Taylor Girardi

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi, Secretary Jack Gregg, Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member Jeremy Bolden

7 - 0 Passed - Unanimously

3. **Discussion and Action** to approve Fourth Quarter, Financials for Little Elm Economic Development Corporation for FY2021.(Jason Barth, EDC Accountant)

Motion by Secretary Jack Gregg, seconded by Treasurer Taylor Girardi

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi, Secretary Jack Gregg, Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member Jeremy Bolden

7 - 0 Passed - Unanimously

Financials for FY 2020-2021 were approved with an estimate on sales tax reimbursement to Main Marketplace in the amount of \$18,826.00 and final financial reports showing an actual reimbursement amount of \$11,437.41 will be reflected in the Board Book.

4. **Discussion and Action** to approve the Memorandum of Understanding for Work Share between the EDC and the Chamber of Commerce for Jennifer Eusse. (Jennette Espinosa, Executive Director)

Motion by Vice President Michel Hambrick, seconded by Secretary Jack Gregg

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi, Secretary Jack Gregg, Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member Jeremy Bolden

7 - 0 Passed - Unanimously

5. **Discussion and Action** to approve the Collateral Assignment of Payment of Rights between Hurtado Barbecue Little Elm, LLC, 100 Hardwicke LLC, and Little Elm Economic Development Corporation. (Jennette Espinosa, Executive Director)

Motion by Board Member Marce E. Ward, seconded by Vice President Michel Hambrick

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi, Secretary Jack Gregg, Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member Jeremy Bolden

7 - 0 Passed - Unanimously

6. **Discussion and Action** to approve a Release of Claim between the Village at Lakefront, LLC, Little Elm EDC, and Town of Little Elm to voluntarily and knowingly execute this release with the express intention of effecting the extinguishment of all claims designated in this release. (Jennette Espinosa, Executive Director)

Motion by Council Liaison Michael McClellan, seconded by Vice President Michel Hambrick

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi, Secretary Jack Gregg, Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member Jeremy Bolden

7 - 0 Passed - Unanimously

7. **Discussion and Action** to approve the Lessor's Consent and Agreement between Tinman Social and Little Elm Economic Development Corporation; requested by Midwest Regional Bank, Tinman Social's financial institution and loan provider. (Jennette Espinosa, Executive Director)

Motion by Board Member Jeremy Bolden, seconded by Secretary Jack Gregg

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi, Secretary Jack Gregg, Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member Jeremy Bolden

7 - 0 Passed - Unanimously

8. Director's Report.

No Action Taken

9. **Executive Closed Session of the Board of Directors.**

The Little Elm EDC will now hold a Closed Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:

(A) Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business prospect.

(B) Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business re: a project in the vicinity of Main Street and Eldorado Parkway.

The Board **did not enter** in to Executive Session

10. **Reconvene into Open Session** : Take any action related to the Executive Session.

11. Adjournment.: Meeting Adjourned at **7:00 pm**

Respectfully,

Jennette Espinosa, Executive Director

Passed and approved this _____ day of _____ 2021



Date: 01/10/2022
Agenda Item #: 3.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve the Eighth Amendment to the Ground Lease Purchase Agreement between Little Elm EDC and Little Elm Hula Hut, LLC. (Jennette Espinosa, Executive Director)

DESCRIPTION:

Details of Amendment Eight are as follows:

The agreement has been revised to show that Hula Hut will be eligible to purchase the property, at the same price of One Million and 0/100 dollars, (\$1,000,000.00), as indicated in the original agreement, but not until 2033. That will be the 10th year after which Hula Hut will have paid the full 3% of the gross sales to the EDC for the lease obligation. After 2023, should it be necessary to revise the lease percentage below the agreed to 3%, then the timeline for option to purchase would be revised as well.

Hula Hut's Option to Purchase:

"At any time after October 1, 2033, at Hula Hut's sole option, Hula Hut or its successor may, at its option, give written notice to Little Elm EDC that Hula Hut will purchase the Premises from Little Elm EDC for the price of One Million and 00/100 Dollars (\$1,000,000) by submitting a real estate sale contract(s) to Little Elm EDC containing the usual provisions set forth in the standard State Bar of Texas Real Estate Sale Contract form, including the obligation of Little Elm EDC to furnish an Owner's Title Policy at Closing at Little Elm EDC's expense but expressly excluding any warranty or representation regarding the Premises except the warranty of good and marketable title, free and clear of any lien, mortgage or perfected security interest. Hula Hut shall agree to close such purchase within thirty (30) days of the full execution of said contract.

BUDGET IMPACT:

No budget impact for this item unless property is purchased in year 2033.

RECOMMENDED ACTION:

Staff recommends that the Board approve the agreement as presented.

Attachments

8th Amendment Hula Hut Ground Lease Purchase

AFTER RECORDING RETURN TO:
Little Elm Economic Development Corporation
100 West Eldorado Parkway
Little Elm, TX 75068

**EIGHTH AMENDMENT TO
GROUND LEASE PURCHASE AGREEMENT
FOR PROPERTY IN LITTLE ELM, DENTON COUNTY, TEXAS**

This **EIGHTH AMENDMENT TO GROUND LEASE PURCHASE AGREEMENT** (“**Eighth Amendment**”) is made and entered into on the ___ day of _____, 2021 (the “**Effective Date**”) by and between **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation having its principal address at 100 W. Eldorado Parkway, Little Elm, Texas 75068-5060 (“**Little Elm EDC**”), and **LITTLE ELM HULA HUT, LLC**, a Texas Limited Liability Company, or its permitted assigns (“**Hula Hut**”), having its principal address at 10750 Strait Lane, Dallas, Texas 75229.

RECITALS

WHEREAS, on or about September 9, 2013, Little Elm EDC and Hula Hut executed the original Ground Lease Purchase Agreement (“**Original Agreement**”) concerning the Premises; and

WHEREAS, on or about September 8, 2014, the Town and Little Elm EDC amended the Original Agreement to extend the term of the Original Agreement and to extend other designated deadlines in the Original Agreement (“**First Amendment**”); and

WHEREAS, on or about March 15, 2015, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment) to address various matters and obligations (“**Second Amendment**”); and

WHEREAS, on or about June 1, 2015, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment and Second Amendment) to more clearly address the Premises subject to the Original Agreement, as amended (“**Third Amendment**”); and

WHEREAS, on or about March 6, 2017, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment, Second Amendment, and Third Amendment) to address the Annual Percentage Rent, Percentage Rent, and Rent Commencement Date (“**Fourth Amendment**”); and

WHEREAS, on or about May 15, 2018, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment) to address Annual Percentage Rent, Rent Commencement Date, and Advertising (“**Fifth Amendment**”); and

WHEREAS, on or about June 8, 2020, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and Fifth Amendment) to address Annual Percentage Rent, Rent Commencement Date, and certain “Impositions” (“**Sixth Amendment**”); and

WHEREAS, on or about August 9, 2021, Little Elm EDC and Hula Hut amended the Original Agreement (as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment) to address to address Annual Percentage Rent provision, and the commencement of rent date, and related changes (“**Seventh Amendment**”); and

WHEREAS, the parties, through this Eighth Amendment, desire to further amend the Original Agreement, as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, and Seventh Amendment to address the certain obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and subject to the terms, provisions and conditions of this Eighth Amendment, and each in consideration of the duties, covenants and obligations of the other hereunder, Little Elm EDC does hereby lease, demise, and let the Premises (as hereinafter defined) unto Hula Hut, and Hula Hut does hereby lease the Premises from Little Elm EDC and the parties hereby agree as follows.

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Eighth Amendment and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. AMENDMENTS TO ORIGINAL AGREEMENT.

(a) **Amendment to Agreement.** That Section 4.5 of the Original Agreement as amended by the Second Amendment is hereby amended to read as follows:

“4.5 **Hula Hut’s Option to Purchase.** At any time after October 1, 2033, at Hula Hut’s sole option, Hula Hut or its successor may, at its option, give written notice to Little Elm EDC that Hula Hut will purchase the Premises from Little Elm EDC for the price of One Million and 00/100 Dollars (\$1,000,000) by submitting a real estate sale contract(s) to Little Elm EDC containing the usual provisions set forth in the standard State Bar of Texas Real Estate Sale Contract form, including the obligation of Little Elm EDC to furnish an Owner’s Title Policy at Closing at Little Elm EDC’s expense but expressly excluding any warranty or representation regarding the Premises except the warranty of good and marketable title, free and clear of any lien, mortgage or perfected security interest. Hula Hut shall agree to

close such purchase within thirty (30) days of the full execution of said contract. Little Elm EDC's obligations under this Agreement regarding the Land will survive, however, in the event of the sale of the Premises to Hula Hut. Hula Hut acknowledges that significant public funds are being spent towards the design and construction of the pond referenced in Sections 1.11 and 8.4 of the Agreement. In consideration of the use and receipt of such public funds, Hula Hut (and its successors and permitted assigns) agree that the pond is a public amenity and that it shall be maintained in perpetuity as a public amenity, to which the public shall have access to at all times. The pond obligation shall run with the land and shall continue indefinitely even in the event of the sale of the Premises to Hula Hut until such time that Little Elm EDC agrees, in writing, that the pond may be abandoned as a public amenity."

SECTION 3. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Eighth Amendment:

- (a) **Agreement and Amendment.** All of the terms, conditions, and obligations of the Original Agreement, and any amendments, remain in full force and effect except where specifically modified by this Eighth Amendment.
- (b) **Amendments.** This Eighth Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this Eighth Amendment. No alteration of or amendment to this Eighth Amendment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (c) **Applicable Law and Venue.** This Eighth Amendment shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Eighth Amendment shall lie in the state district courts of Denton County, Texas.
- (d) **Assignment.** This Eighth Amendment may not be assigned without the express written consent of the other party, which shall not be unreasonably withheld.
- (e) **Binding Obligation.** This Eighth Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. Little Elm EDC warrants and represents that the individual executing this Eighth Amendment on behalf of the Little Elm EDC has full authority to execute this Eighth Amendment and bind the Little Elm EDC to the same. Hula Hut warrants and represents that the individual executing this Eighth Amendment on Hula Hut's behalf has full authority to execute this Eighth Amendment and bind Hula Hut to the same.

- (f) **Caption Headings.** Caption headings in this Eighth Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of the Eighth Amendment.
- (g) **Counterparts.** This Eighth Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (h) **Effective Date.** The effective date (the “**Effective Date**”) of this Eighth Amendment shall be the date of the latter to execute this Amendment by Hula Hut and the Little Elm EDC.
- (i) **Severability.** The provisions of this Eighth Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Eighth Amendment is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Eighth Amendment shall be enforced as if the invalid provision had never been included.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Eighth Amendment.

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EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS, which constitute but one and the same instrument, as of the day and year first above written. Upon the final execution hereof by Little Elm EDC and Hula Hut, the last to sign of such parties shall complete the date on the first page thereof.

LITTLE ELM EDC:

**LITTLE ELM ECONOMIC
DEVELOPMENT CORPORATION,**
a Texas non-profit corporation

By: _____

Ken Eaken, President

Date Executed: _____

ATTEST:

Jennette Espinosa, Executive Director

HULA HUT:

LITTLE ELM HULA HUT, LLC,
A Texas limited liability company

By: _____

Stephen Oyster, Managing Partner

Date Executed: _____



Date: 01/10/2022
Agenda Item #: 4.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve the First Amendment to the Performance Agreement between Little Elm EDC and Hurtado Barbecue, LLC. (Jennette Espinosa, Executive Director)

DESCRIPTION:

Amendments to the Original Agreement are as follows:

- 1. Qualified Expenditures.** Developer covenants and agrees to submit to the EDC upon request, invoices, receipts, or other documentation of the Qualified Expenditures made to the Property in a form acceptable to the EDC prior to any reimbursement. Developer covenants and agrees to provide to the EDC upon request said invoices, receipts, or other documentation in the amount not to exceed **Four Hundred Thousand and No/100 Dollars (\$400,000.00) by August 1, 2022.**
- 2. Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained by **August 1, 2022**, a Certificate of Occupancy from the Town of Little Elm, Texas, for a minimum of 5,935 square feet for Hurtado Barbecue Restaurant space located on the Property.
- 3. Operate Hurtado Barbecue Restaurant.** Developer covenants and agrees by **August 1, 2022**, and during the Term of this Agreement to keep open to the general public the Hurtado Barbecue Restaurant located on the Property, for a term of fifteen (15) years.
- 4. Job Creation and Retention.** Developer covenants and agrees by **August 1, 2022**, and during the Term of this Agreement to employ and maintain a minimum of **thirty-five (35)** Full-Time Equivalent Employment Positions working at the Property. Developer covenants and agrees beginning on **September 1, 2023** (for the initial reporting period of August 1, 2022 to July 31, 2023), and during the Term of this Agreement, Developer shall deliver to EDC upon request an annual compliance verification form signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the "Annual Compliance Verification"). The Developer covenants and agrees beginning on September 1, 2023, and annually thereafter during the Term of this Agreement, there will be a total of fifteen (15) Annual Compliance Verifications due and submitted to EDC covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

5. Financial Assistance. EDC covenants and agrees to submit reimbursement for Qualified Expenditures made by the Developer in the amount of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** within thirty (30) days of receipt of invoices, receipts, or other documentation in the minimum amount of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** by **August 1, 2022**, consistent with Section 4(a) of this Agreement, and receives a certificate of occupancy and is open for business consistent with Sections 4(b) and 4(c) of this Agreement.”

BUDGET IMPACT:

The Qualified Expenditures in the agreement, in the amount of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)**, is a budgeted item from EDC Incentives for FY 2021-2022.

RECOMMENDED ACTION:

Staff recommends that the Board approve the amended agreement as presented.

Attachments

First Amendment to Performance Agreement-Hurtado Barbecue

**FIRST AMENDMENT
TO
PERFORMANCE AGREEMENT**

This **FIRST AMENDMENT TO PERFORMANCE AGREEMENT** (hereinafter referred to as the “First Amendment”) is made and entered into by and between the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “LEEDC”), and **HURTADO BARBECUE LITTLE ELM, LLC**, a Texas limited liability company (hereinafter referred to as the “Developer”):

RECITALS:

WHEREAS, on or about August 9, 2021, the LEEDC and Developer entered into the original Performance Agreement (hereinafter referred to as the “Original Agreement”) regarding financial assistance to operate the Hurtado Barbecue to be generally located at 100 Hardwicke, Suite 100 and 120, Little Elm, Denton County, Texas; and

WHEREAS, on or about December 13, 2021, the LEEDC and Developer entered into a Collateral Assignment of Payment Rights where Section 4 of said Collateral Assignment extended certain deadlines to August 1, 2022; and

WHEREAS, the LEEDC and Developer now desire to amend Sections 4(a), 4(b)(iii), 4(e), 4(f), and 5(a) of the Original Agreement to the August 1, 2022 extension date.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LEEDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this First Amendment and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. AMENDMENT TO ORIGINAL AGREEMENT.

(a) **Amendment to Original Agreement.** That Section 4(a) of the Original Agreement is hereby amended to read as follows:

“(a) **Qualified Expenditures.** Developer covenants and agrees to submit to the LEEDC upon request, invoices, receipts, or other documentation of the Qualified Expenditures made to the Property in a form acceptable to the LEEDC prior to any reimbursement. Developer covenants and agrees to provide to the LEEDC upon request said invoices, receipts, or other documentation in the amount not to exceed **Four Hundred Thousand and No/100 Dollars (\$400,000.00) by August 1, 2022.**”

(b) **Amendment to Original Agreement.** That Section 4(b)(iii) of the Original Agreement is hereby amended to read as follows:

“iii. **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained by **August 1, 2022**, a Certificate of Occupancy from the Town of Little Elm, Texas, for a minimum of 5,935 square feet for Hurtado Barbecue Restaurant space located on the Property.”

(c) **Amendment to Original Agreement.** That Section 4(e) of the Original Agreement is hereby amended to read as follows:

“(e) **Operate Hurtado Barbecue Restaurant.** Developer covenants and agrees by **August 1, 2022**, and during the Term of this Agreement to keep open to the general public the Hurtado Barbecue Restaurant located on the Property, for a term of fifteen (15) years.”

(d) **Amendment to Original Agreement.** That Section 4(f) of the Original Agreement is hereby amended to read as follows:

“(f) **Job Creation and Retention.** Developer covenants and agrees by **August 1, 2022**, and during the Term of this Agreement to employ and maintain a minimum of **thirty-five (35)** Full-Time Equivalent Employment Positions working at the Property. Developer covenants and agrees beginning on **September 1, 2023** (for the initial reporting period of August 1, 2022 to July 31, 2023), and during the Term of this Agreement, Developer shall deliver to LEEDC upon request an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the “Annual Compliance Verification”). The Developer covenants and agrees beginning on **September 1, 2023**, and annually thereafter during the Term of this Agreement, there will be a total of **fifteen (15)** Annual Compliance Verifications due and submitted to LEEDC covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.”

(e) **Amendment to Original Agreement.** That Section 5(a) of the Original Agreement is hereby amended to read as follows:

“(a) **Financial Assistance.** LEEDC covenants and agrees to submit reimbursement for Qualified Expenditures made by the Developer in the amount of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** within thirty (30) days of receipt of

invoices, receipts, or other documentation in the minimum amount of **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** by **August 1, 2022**, consistent with Section 4(a) of this Agreement, and receives a certificate of occupancy and is open for business consistent with Sections 4(b) and 4(c) of this Agreement.”

SECTION 3. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this First Amendment:

- (a) **Amendments.** This First Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this First Amendment. No alteration of or amendment to this First Amendment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this First Amendment shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** Neither Party shall have the right to assign its rights and/or obligations under this First Amendment, or any interest herein, without the prior written consent of the other Party.
- (d) **Binding Obligation.** This First Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. LEEDC warrants and represents that the individual executing this First Amendment on behalf of the LEEDC has full authority to execute this First Amendment and bind the LEEDC to the same. Developer warrants and represents that the individual executing this First Amendment on Developer’s behalf has full authority to execute this First Amendment and bind it to the same.
- (e) **Caption Headings.** Caption headings in this First Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of the First Amendment.
- (f) **Counterparts.** This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Effective Date.** The effective date (the “Effective Date”) of this First Amendment shall be the date of the latter to execute this First Amendment by and between the LEEDC and Developer.

- (h) **Original Agreement and any Amendments.** All of the terms, conditions, and obligations of the Original Agreement, and any amendments remain in full force and effect except where specifically modified by this First Amendment.
- (i) **Severability.** The provisions of this First Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this First Amendment is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the First Amendment shall be enforced as if the invalid provision had never been included.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this First Amendment.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

LEEDC:

LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Ken Eaken, President

Date Signed: _____

ATTEST:

Jennette Espinosa, Executive Director

DEVELOPER:

HURTADO BARBECUE LITTLE ELM LLC,
A Texas limited liability company,

By: _____
Brandon Hurtado, Owner

Date Signed: _____