

**THE CITY OF MCKINNEY, TEXAS  
AND  
BBV TEXAS DEVELOPMENT, L.L.C.  
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT**

**WHEREAS**, *BBV TEXAS DEVELOPMENT, L.L.C.*, a Texas limited liability company (hereinafter "BBV"), is entering into this Chapter 380 Economic Development Agreement (this "Agreement") pursuant to a program initiated by the *CITY OF MCKINNEY, TEXAS* (hereinafter "CITY") pursuant to Chapter 380 of the Texas Local Government Code, for the primary purpose of constructing, staffing, and operating a state-of-the-art healthcare facility (the "Project") located wholly within the City of McKinney, Texas; and

**WHEREAS**, the CITY has agreed to a conditional economic development grant to BBV based on the timely completion of the Project, including but not limited to the construction of certain building improvements, a minimum level of employee staffing, and other economic development criteria; to be funded by the CITY upon the timely performance of BBV under this Agreement; and

**WHEREAS**, the CITY has the authority under Chapter 380 of the Texas Local Government Code to make loans or grants of CITY funds for the purposes of promoting local economic development and stimulating business and commercial activity within the CITY; and

**WHEREAS**, the CITY has determined the Project to be an eligible project for a conditional grant to BBV of its funds which grant will serve the public purpose of promoting local economic development and enhancing business and commercial activity in the City of McKinney, Texas; and

**WHEREAS**, the CITY has concluded and hereby finds that this Agreement clearly promotes economic development in the City of McKinney and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the CITY and BBV; and

**WHEREAS**, the City Council has considered and approved this Agreement authorizing the CITY pursuant to applicable law; and

**NOW, THEREFORE**, for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and BBV agree as follows:

## SECTION 1. TERM

This Agreement shall be effective from the Effective Date until January 31, 2014, unless terminated sooner under the provisions herein.

## SECTION 2. DEFINITIONS

The following words shall have the following meanings when used in this Agreement.

- a. Agreement. The word "Agreement" means this Chapter 380 Economic Development Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- b. CITY. The word "CITY" means the City of McKinney, Texas. For purposes of this Agreement, CITY's address is 222 N. Tennessee, McKinney, Texas 75069.
- c. BBV. The words "BBV" mean BBV Texas Development, L.L.C., a Texas limited liability company, including its successors.
- d. Grant. The word "Grant" means a payment to BBV under the terms of this Agreement.
- e. Grant Submittal Package. The words "Grant Submittal Package" mean the documentation required to be supplied to CITY as a condition of receipt of any Grant.
- f. Project. The word "Project" means <sup>the</sup> the healthcare facility known as "                    ", ~~owned and operated~~ by BBV, including but not limited to, the real property, building improvements, equipment, fixtures, business personal property, employee staffing and horizontal lot improvements, located generally at      Lake Forest Drive, McKinney, TX, 75071.
- g. Prorated. The word "Prorated" means the reduction of the Grant based upon a formulaic calculation weighting 50% of the Grant on the satisfaction of the valuation condition in Section 4(b) below and 50% of the Grant on the satisfaction of the employment condition in Section 4(c) below. For example, a CCAD valuation of \$6,000,000 and an Eligible Employee count of 80 employees on the required dates would yield a prorated Grant of  $6,000,000/7,000,000 \times \$50,000 + 80/90 \times \$50,000 = \$42,857 + \$44,444 = \$87,301$ .

## SECTION 3. GRANT FUNDING OBLIGATION OF CITY

During the term of this Agreement, CITY shall fund a Grant in the amount of up to One Hundred Thousand and No/100 Dollars (\$100,000.00) payable upon its receipt of a certificate of occupancy for the Project and provided the express terms and conditions described in Section 4 below are satisfied. The amount of the Grant shall be Prorated

based upon BBV's satisfaction, or partial satisfaction, of the funding conditions in Section 4 (b) and 4 (c) below. Subject to BBV's continuous satisfaction of Section 4 below, the CITY agrees to process the Grant within thirty (30) days after receipt of BBV's Grant Submittal Package(s).

#### **SECTION 4. OBLIGATIONS OF BBV**

While this Agreement is in effect, BBV shall comply with the following terms and conditions to be eligible for any Grant; as such conditions are described or may apply:

- a. BBV shall complete construction of the Project, consisting of approximately 70,000 square feet of improved, healthcare and office space and receive a Certificate of Occupancy therefor on or before December 31, 2014.
- b. The Project, including the real property, real property improvements and business personal property shall have an appraised value on January 1, 2015, as determined by the Collin County Appraisal District ("CCAD"), of not less than \$8,000,000.00. BBV may render the value of the property described in this subsection b. to achieve compliance herewith.
- c. To receive the Grant, BBV's tenant, \_\_\_\_\_, shall employ not less than ninety (90) full-time equivalent, eligible employees (the "Eligible Employees") at the Project. "Eligible Employee" shall be that amount of full-time equivalent employees having an hourly wage in excess of \$20.00/hour on January 1, 2015. The employee condition of the Grant shall be prorated only if forty percent (40%) of the full-time equivalent employees are Eligible Employees.
- d. BBV shall submit a Grant Submittal Package consisting of (i) a "Bills Paid Affidavit", satisfactory to the CITY, covering all vendor/contractor payments and draws for the Project; (ii) detailed employment data; and (iii) any other cost and payment documentation reasonably requested by CITY for the Project. The CITY, or its designee, may verify that the expenditures were made in such amounts prior to the Grant disbursement.
- e. BBV shall be in compliance with all applicable City of McKinney codes, state and federal laws, and local ordinances applicable to the Project.

#### **SECTION 5. EVENTS OF DEFAULT.**

Each of the following shall constitute an event of default under this Agreement:

- a. CITY's failure to process the Grant payment to BBV in accordance with Section 3 of this Agreement.

- b. BBV's violation or failure to perform any of the covenants contained in Section 4 hereinabove.
- c. BBV's sale or lease of the Property or Project to any third-party within three (3) years after its receipt of a Certificate of Occupancy, save and except the initial lease agreement by and between BBV and \_\_\_\_\_ having a lease term in excess of three (3) years.
- d. BBV's cessation of the Project as an ongoing use on the Property within three (3) years after its receipt of a Certificate of Occupancy.

## **SECTION 6. EFFECT OF AN EVENT OF DEFAULT**

In the event of default under Section 5, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement.

As long as it shall not be in default, BBV shall further have the power to enforce specific performance to collect amounts owing upon CITY's default without terminating this Agreement. No action shall lie for punitive damages, and no special or consequential damages shall be recovered by either party. If BBV defaults after its receipt of the Grant and such default is not otherwise cured, CITY may seek repayment of the Grant through all legal means, including suit for breach of this Agreement. No Grant payment shall be due or owing by CITY to BBV after termination.

## **SECTION 7. MISCELLANEOUS PROVISIONS**

The following miscellaneous provisions are a part of this Agreement:

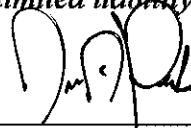
- a. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all of the parties hereto.
- b. **Applicable Law and Venue.** This Agreement 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 Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.
- c. **Binding Obligation Only on Effective Date.** This Agreement shall become a binding obligation on the parties on the Effective Date. CITY warrants and

represents that the individual executing this Agreement on behalf of CITY has full authority to execute this Agreement and bind CITY to the same. BBV warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

- d. **No Waiver of Sovereign Immunity.** The CITY shall not have waived any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- e. **Execution of Agreement.** The CITY has authorized its City Manager to execute this Agreement on behalf of the CITY.
- f. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- g. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- h. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the latter of the dates on which the BBV and CITY have each executed this Agreement.
- h. **Counterparts.** This Agreement 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.

**BBV TEXAS DEVELOPMENT, L.L.C.,**  
*a Texas limited liability company*

By:



Josh Prusak, its MANAGER / MEMBER

Date Signed: 10.9.12

**CITY OF MCKINNEY, TEXAS**

By: \_\_\_\_\_  
Name: JASON GRAY

Title: CITY MANAGER

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
Attorney for City of McKinney

PREPARED IN THE OFFICES OF:  
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