

**ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ABILENE
AND THE ABILENE IMPROVEMENT CORPORATION**

This Economic Development Agreement (“Agreement”) is effective as of the ____ day of _____, 2022 (“Effective Date”), by and between the Third and Pine, LP, ("Developer"), and the CITY OF ABILENE, TEXAS, a home rule city and municipal corporation ("City"), for the purposes and considerations stated below.

RECITALS

WHEREAS, the Developer has acquired fee simple ownership of 302 Pine Street, Abilene, Taylor County, Texas, being more particularly described on **Exhibit A – Project Area**, which is attached and incorporated herein as part of this Agreement, and

WHEREAS, the governing body of the City of Abilene adopted Resolution 49-2016 creating an Economic Development Program authorized by Chapter 380 of the Texas Local Government Code; and

WHEREAS, the governing body of the City of Abilene adopted Resolution 78-2018 creating the Abilene Neighborhood Empowerment Zone No. 1 and Resolution 203-2021 creating the Abilene Neighborhood Empowerment Zone No. 2, authorized by Chapter 378 of the Texas Local Government code (the “Zone”), establishing certain economic development incentive programs within the Zone; and

WHEREAS, the City desires to enter into this Agreement with the Developer in order to implement the Economic Development Program developed by the City to enhance and expand the City’s commercial economic and employment base to the long term interest and benefit of the City and the State of Texas; and

WHEREAS, the City has determined that making an economic development grant for the Economic Incentives to the Developer in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants, will increase the quality of life of the City, will foster and promote additional economic development and will protect and safeguard the public health, safety and welfare of its residents; and

WHEREAS, the Project Area is located within the Zone and Developer has acquired the Project Area for re-development and the removal of blight within the Zone; and

WHEREAS, the Project Area in its current state is creating downward economic pressure on the economic vitality of the area, and it is anticipated that the re-development of the Project Area will have a direct and positive economic benefit to the City; and

WHEREAS, the City hereby finds that this Agreement embodies an eligible “project” and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and is in the best interests of the City; and

WHEREAS, the City hereby finds that this Agreement promotes infill development within the Zone and, as such, meets the requisite under Chapter 378 of the Texas Local Government Code and is in the best interests of the City.

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

I. AUTHORITY

- 1.01 The Agreement is authorized by state law, including but not limited to Chapters 378 and 380 of the Texas Local Government Code, and is within the authority of the City and constitutes a legal and binding obligation of the City.
- 1.02 The Developer’s execution and performance of this Agreement constitutes a valid and binding obligation of the Developer.
- 1.03 The factual recitals and findings set forth above are found to be true and correct for all purposes, and are incorporated into this Agreement.

II. DEFINITIONS

- 2.01. **Program** means the economic development program identified in Article IV herein and established by the City pursuant to this Agreement.
- 2.02. **Developer** means the Third and Pine, LP, its successors or assigns.

III. TERM

- 3.01 This Agreement shall be effective as of the date of execution of both parties. This Agreement shall remain in full force and effect until the earlier of: (A) each party hereto has completed their respective obligations hereunder; or (B) one year from the Effective Date (“**Term**”); provided that if the City has not completed the City’s obligations within such one-year period, this Agreement will continue until such obligations are complete.

IV. ECONOMIC DEVELOPMENT PROGRAM

- 4.01 Pursuant to the City’s Infill Development Program, the City of Abilene grants an Economic Incentive in the amount not to exceed \$10,006.00 (the “Economic Incentive”) for the purposes of a utility tap and repairing the street associated with the utility tap.

V. DEVELOPER’S OBLIGATIONS AND DUTIES

- 5.01 The Developer shall complete the utility tap and make the necessary repairs to North 3rd Street per the estimate submitted by the Developer and as approved by the City Manager, or his or her designee. Said approval shall be made in writing and shall be required before the commencement of work. Developer shall notify the City Manager in writing of the completion of the work. The Developer shall secure written acceptance of the repair to North 3rd Street from the City Manager, or his or her designee, as a condition precedent for the receipt of the economic incentive. Written acceptance of the repair shall be at the sole discretion of the City Manager, or his or her designee.

VI. CITY OBLIGATIONS AND DUTIES

- 6.01 Promptly pay the Developer the Economic Incentive within thirty (30) days upon receipt of notice of completion, and subject to acceptance of the Developer’s Obligations by the City Manager, or his or her designee, of the public improvements associated with the project. Written acceptance of the repair shall be at the sole discretion of the City Manager, or his or her designee.

VII. DEFAULT

- 7.01 If any party should default upon any terms or obligations with respect to this Agreement (“**Defaulting Party**”), the other party (“**Complaining Party**”) shall provide written notice of the default and shall reasonably include the actions required to cure such default. If the Defaulting Party cures the default within thirty (30) days after notice of default is received (“**Cure Period**”), or commences to cure default within said thirty (30) days and diligently pursues the cure to its conclusion, then this Agreement shall continue as if no default occurred. City agrees that Lender is a third-party beneficiary of this Agreement and if City is the Defaulting Party, Lender may enforce this Agreement directly against the City as a Complaining Party.
- 7.02 In the event that the Defaulting Party fails to cure the default as required by Section 7.01 above, the Complaining Party may, by action or proceeding at law or in equity, be awarded

damages and/or specific performance for such default, including reasonable attorney's fees and costs.

VIII. GENERAL PROVISIONS

- 8.01 **DEVELOPER COVENANTS AND AGREES TO AND DOES HEREBY FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM ALL CLAIMS, SUITS OR CAUSES OF ACTION OF ANY NATURE WHATSOEVER WHETHER REAL OR ASSERTED, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.**
- 8.02 If any provision of this Agreement, or a portion thereof, or the application thereof to any person or circumstances shall to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.03 This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought under this Agreement shall be in Taylor County, Texas.
- 8.04 Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render any of said parties liable for the debts or obligations of any other of said parties.
- 8.05 Except as otherwise expressly provided herein, this Agreement may only be amended, modified, or terminated by a declaration in writing, executed and acknowledged by all the parties to this Agreement.
- 8.06 This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and supersedes all prior discussions and agreements between the parties.
- 8.07 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

8.08 In the event any legal proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE
FOLLOWS.]

SIGNED AND EFFECTIVE on the date last set forth below.

DEVELOPER

Third and Pine, L.P.
993 N 3rd Street
Abilene, TX 79601

By: Ray Ferguson, President of Condley Financial Services, Inc., General Partner of Third and Pine, LP.

Name:

Its:

CITY OF ABILENE

ATTEST:

Robert Hanna, City Manager

Shawna Atkinson, City Secretary

APPROVED AS TO FORM:

Stanley Smith, City Attorney

STATE OF TEXAS)
)
COUNTY OF TAYLOR) ACKNOWLEDGEMENT

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, in his capacity as _____ of Third and Pine, LP.

Notary Public in and for
the State of Texas

STATE OF TEXAS)
)
COUNTY OF TAYLOR) ACKNOWLEDGEMENT

This instrument was acknowledged before me on the ____ day of _____, 2022, by Robert Hanna, in his capacity as City Manager of the City of Abilene, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for
the State of Texas

Exhibit "A" – Project Area

302 Pine Street, Abilene, TX 79601 – Utility Tap along North Third Street

