RESOLUTION NO. 19 - 16

A RESOLUTION OF THE CITY OF COMMERCE, TEXAS, RELATING TO AUTHORIZING THE APPROVAL OF A REPLAT AT 708 SYCAMORE; GRANTING AUTHORITY TO THE MAYOR TO EXECUTE SAID RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE MAYOR'S SIGNATURE TO SAID RESOLUTION; AND, AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL OTHER INSTRUMENTS REQUISITE IN IMPLEMENTING SAID RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE CITY MANAGER'S SIGNATURE.

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall, on the 19th day of March 2019, at 6:00 p.m.; a majority of council members being present and constituting a quorum, the following resolution was adopted:

WHEREAS, an application, attached hereto and marked exhibit "A", has been submitted by Ajay Sheladia, Bal Munkund, Inc., requesting to replat all of lots 7, 8, 9, & 13, and parts of lots 3, 4, 10, & 11 of Block 14, Acres 2.026, Mott's Map, Old Town of City of Commerce, David Anders Survey, A-31 Hunt County, Texas, known as 708 Sycamore Street;

WHEREAS, the notice pursuant to Section 2.6 of the Subdivision Ordinance of the Code of Ordinances of the City of Commerce, Texas, has been published in the official newspaper and given to adjacent property owners;

WHEREAS, the Planning and Zoning Commission of the City of Commerce, Texas, conducted a public hearing on the 26th day of February 2019, at 5:30 p.m. in accordance with Section 2.6 of the Subdivision Ordinance of the Code of Ordinances of the City of Commerce, Texas;

WHEREAS, after conducting a public hearing on said replat request, wherein public comment was received and considered on the said application, and all other prerequisites relating thereto, and after consideration of the grounds for the replat, the Planning and Zoning Commission unanimously voted to recommend approval of the replat request conditional on the approval of a variance from Section 2.6(B)(1) of the City of Commerce Subdivision Ordinance as reflected in the minutes of the meeting attached hereto, marked exhibit "B", and made a part hereof as if copied herein verbatim; and,

WHEREAS, the City Council, after having reviewed the action of the Planning and Zoning Commission and its recommendation, as well as having complied with all prerequisites of the Subdivision Ordinance of the City of Commerce, Texas, relative to the approval of replats, deems it in the best interest and general welfare of the City of Commerce, Texas, that said replat should be authorized for said property.

THEREFORE, BE IT RESOLVED, that the Mayor of the City of Commerce, Texas, be authorized and he is hereby authorized to execute this resolution;

BE IT FURTHER RESOLVED, that the City Secretary be authorized, and she is hereby authorized to attest to the signature of the Mayor to this resolution;

BE IT FURTHER RESOLVED, that the City Manager be authorized, and he is hereby authorized to execute the agreement and any and all instruments requisite in implementing said resolution;

BE IF FURTHER RESOLVED, that the City Secretary be authorized, and she is hereby authorized to attest to the signature of the City Manager to any and all instruments requisite in implementing this resolution;

PASSED BY THE GOVERNING BODY of the City of Commerce, Texas, at a regular meeting of the City Council of the City of Commerce, Texas, on the 19th day of March 2019.

ATTEST:

Molly Jacobsen, City Secretary

CITY OF COMMERCE, TEXAS

Gene Lockhart, Mayor Pro-Tem

(Seal)

APPROVED AS TO FORM:

Charles Anderson, City Attorney

I, Molly Jacobsen, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a resolution and that the same has not been repealed and is in full force and effect.

(Seal)

Molly Jacobsen, City Secretary
City of Commerce, Texas

Sworn to and subscribed before me, on this the 22nd day of May, 2019, to certify which witness my hand and seal of office.

BECKY PATTILLO
Notary Public
STATE OF TEXAS
ID#12456126-9
My Comm. Exp. May 1, 2023

Notary Public, State of Texas

BECKY PATTILLO
Notary Public
STATE OF TEXAS
ID#12683129-9
My Comm. Exp. May 2, 2024

"Ephilit A" - page 1 of 3

Plat/Replat Application

Project Name: Single unit New Construction Residential

Location Information

Address: 708 S. 4 Carrow Commerce TX

Survey Name/Abstract No./Subdivision Name:

Lot, Block: Lot 1 Block 14 **Addition Name:** Hari Addition

Number of Acres: 2.026 **Number of Lots:** 1

Geographic ID Number R- **R-**

Geographic ID Number R- **R-**

Submittal Type

- ☐ Amending Plat
- ☐ Development Plat
- ☐ Minor Plat
- ☐ Minor Replat – Non-Residential
- ☑ Minor Replat – Residential
- ☐ Plat Preliminary
- ☐ Plat Final
- ☐ Replat Preliminary
- ☐ Replat Final

Owner/Application Information

Owner Name:	AJAY SHELADIA	**Applicant Name:**	AJAY SHELADIA
Company:	BAL MUKUND INC	**Company:**	
Address:	825 CRESTVIEW DR.	**Address:**	
City, State, Zip:	COPPELL TX. 75019	**City, State, Zip:**	
Phone:	817-703-9128	**Phone:**	
Email:	ajayshelad14@gmail.com	**Email:**	

☐ I will represent the application myself; or

☑ I hereby designate Phil McCord (applicant above) to act as my agent for submittal, processing, representation, and/or presentation of this application. The designee shall be the primary contact person for this application.

I hereby certify that I am the owner of the property and certify that the information provided within this application is true and correct. By signing below, I agree that the City of Commerce is authorized and permitted to provide information contained within this application, including email address, to the public and in response to a Public Information Request.

Owner Signature: [signature] **Date:** 12/12/2018

"Exhibit A" page 2 of 3

Variance for the re-plat request for 708 Sycamore Street, Commerce, Texas 75428

From: Ajay Sheladia owner of Bal Mukund, Inc.

To: Commerce Planning and Zoning Commission & Commerce City Council:

I am Ajay Sheladia, the owner of the property located at 708 Sycamore Street, Commerce, Texas 75428. The subject property consists of four individual lots plus four partial lots which were sold to me as one piece of property. I have submitted a re-plat request for the subject property to combine all the lots into one continuous tract of land.

The City Planning Department recently advised that when previous owners purchased and resold the property, they did not take the appropriate steps to replat the four partial lots when they were divided and resold. As a result of their failure to perform, the City has requested I provide letters from the property owners who own the remainder of the four partial lots which were sold as part of a large piece of property to me.

My real estate broker and her property manager have attempted to contact the property owners by mail and in person, but unfortunately, the feedback has been as follows: one of the adjacent properties listened, but wants to know why she needs to sign anything for property she does not own. Another shouted from behind the door to go away and never come back. The next one is a rental.

I am requesting a variance to the requirement to provide letters from these four adjacent property owners, since, as established above, my attempts to contact the property owners has been unsuccessful. This delay is causing an unreasonable hardship and difficulty in being able to move forward with my multi-family development plans for 708 Sycamore which will provide new 2 bedroom one bath living units at $800 a month which are truly needed in Commerce for the town residents.

Your consideration is greatly appreciated.

Sincerely,

Ajay Sheladia

"Exhibit A" - Page 3 of 3

OWNERS CERTIFICATE

I, Bal Mukund, do hereby certify that I am the owner of this 2.026 acre tract in the City of Commerce, Hunt County, Texas and do adopt this plat as my plan to dedicate said tract, and do hereby dedicate to the City of Commerce the streets, alleys, rights of way, easements, other public areas as shown hereon, and I do hereby dedicate all utility improvements as shown on the engineering plans for this subdivision if any.

BAL MUKUND

STATE OF TEXAS
COUNTY OF HUNT

This instrument was acknowledged before me, a Notary Public, on this _____day of _____, 2019, by BAL MUKUND

Notary Public, State of Texas

CERTIFICATE OF CITY COUNCIL

APPROVED by the City Council of Commerce, Texas on the _____ of _____, 2019.

Mayor _____ attested by _____ City Secretary

CERTIFICATE OF CITY PLANNING AND ZONING

APPROVED by the Commerce Planning and Zoning Commission on the _____day of _____, 2019.

Chairman _____ attested by _____ Secretary

KNOW ALL MEN THESE PRESENTS:

That I, John Cooper, Registered Professional Land Surveyor in the State of Texas certify that this plat was prepared from an actual survey on the ground and that the corner monuments shown thereon were placed or found under my supervision.

Dated: July 9, 2018

Signed: John Cooper
John Cooper, R.P.L.S. No. 5226

STATE OF TEXAS
COUNTY OF HOPKINS

This instrument was acknowledged before me, a Notary Public, on this 3rd day of January, 2019, by John Cooper.

Notary Public, State of Texas

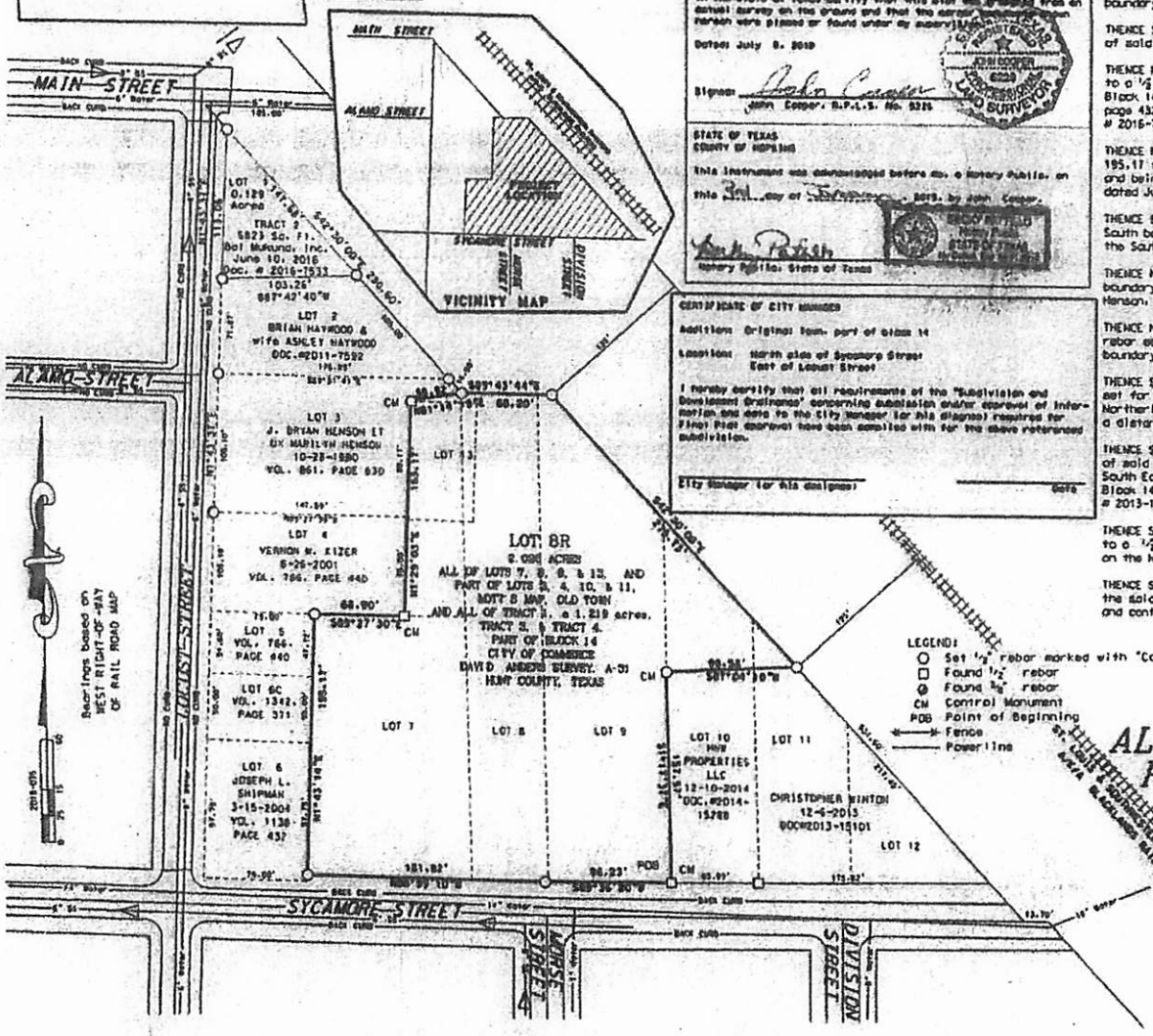
CERTIFICATE OF CITY MANAGER

Addition: Original Town, part of Block 14

Location: North side of Sycamore Street
East of Locust Street

I hereby certify that all requirements of the "Subdivision and Development Ordinance" concerning subdivision under approval of information and data to the City Manager for this diagram) required for Final Plat approval have been complied with for the above referenced subdivision.

City Manager for this designed _____ Date _____



FIELD NOTES FOR 2.026 ACRES
ALL OF LOTS 7, 8, 9, & 13, AND
PART OF LOTS 3, 4, 10, & 11,
AND ALL IN BLOCK 14
MOTT'S MAP, OLD TOWN
CITY OF COMMERCE
DAVID ANDERS SURVEY, A-31
HUNT COUNTY, TEXAS

Cooper Land Surveying, Inc.
3804 Texas Hwy. 11 West
P. O. Box 587
Sulphur Springs, Texas 75483
(903) 439-1818
*Fax * 903-439-0035*
*Firm * 10016800*

All that certain tract or parcel of land situated in the David Anders Survey, A-31, located about 14.84 miles N58°30'E from the City of Greenville, Hunt County, Texas; being all of Lots 7, 8, 9, & 13, and being part of Lots 3, 4, 10, & 11 of Block 14 according to Mott's Map of 1914, Old Town Commerce, and being all of that certain tract 1, a 1.219 acre tract, tract 3, and tract 4 as described in a deed from Jeremy Joseph McDaniel and Sherry McDaniel to Bal Mukund, Inc. dated June 10, 2016, recorded in Doc. # 2016-7533, Official Public Records of Hunt County, Texas, and being more fully described as follows:

BEGINNING at a 1/2" rebar found on the most Southerly South East corner of said Tract 1, a 1.219 acre tract, being on the South West corner of a lot described in a deed to HWW Properties, LLC, dated December 10, 2014, recorded in Doc. # 2014-15298, Official Public Records, and being on the North boundary line of Sycamore Street;

THENCE S89°36'20"W along the South boundary line of said 1.219 acre tract and North boundary line of said Sycamore Street a distance of 96.23 feet to a 1/2" rebar set for an angle corner;

THENCE N88°59'10"W along the North boundary line of said Sycamore Street a distance of 181.82 feet to a 1/2" rebar set for a corner, being on the East boundary line of a 0.19 acre tract a/k/a Lot 6 of said Block 14 as described in a deed to Joseph L. Shipman, dated March 11, 2004, recorded in Vol. 1138, page 432, Official Public Records, and being on the South West corner of said Tract 4 of said Doc. # 2016-7533, Official Public Records;

THENCE N1°43'14"W along the West boundary line of said Tract 4, Doc. # 2016-7533, a distance of 195.17 feet to a 1/2" rebar set for a corner, being on the North East corner of Lot 5 of said Block 14, and being on the South boundary line Lot 4 of said Block 14, as described in a deed to Vernon W. Kizer, dated June 26, 2001, recorded in Vol. 766, page 440, Official Public Records;

THENCE S89°27'30"E along the North boundary line of said tract 4 of said Doc. # 2016-7533, and the South boundary line of said Lot 4 a distance of 68.90 feet to a found 1/2" rebar for a corner, being on the South boundary line of said Lot 4 of said Block 14;

THENCE N1°29'03"E a distance of 163.17 feet to a found 1/2" rebar for a corner, being on the South boundary line of Lot 3 of said Block 14 as described in a deed to J. Bryan H. Henson and wife Marilyn K. Henson, dated October 28, 1980, Recorded in Vol. 861, page 630, Deed Records;

THENCE N89°14'19"E along the South boundary line of said Lot 3 a distance of 39.92 feet to a 1/2" rebar set for a corner, being on the most Easterly East corner of said Lot 3, and being on the West boundary line of the Blacklands Rail Road, a/k/a St. Louis & Southwestern Rail Road;

THENCE S89°43'44"E along the said Rail Road Right-of-Way a distance of 68.20 feet to a 1/2" rebar set for a corner, being on an internal corner of said rail road right-of-way, being on the most Northerly North East corner of said 1.219 acre tract, a found 1/2" rebar bears S44°37'18"E a distance of 5.59 feet;

THENCE S42°30'00"E along the East boundary line of said 1.219 acre tract and the West right-of-way of said railroad a distance of 275.73 feet to a 1/2" rebar set for a corner, being on the most Easterly South East corner of said 1.219 acre tract, and being on the North boundary line of Lot Lot 11, of said Block 14 as described in a deed to Christopher Winton, dated August 1, 2016, recorded in Doc. # 2013-15101 Official Public Records;

THENCE S87°04'10"W along the South boundary line of said 1.219 acre tract a distance of 98.58 feet to a 1/2" rebar set for a corner, being on an internal angle corner of said 1.219 acre tract and being on the North West corner of said HWW Properties, LLC, Doc. # 2014-15298;

THENCE S1°17'37"E along the East boundary line of said 1.219 acre tract and the West boundary line of the said HWW Properties, LLC boundary line a distance of 157.57 feet to the PLACE OF BEGINNING and containing 2.026 acres of land.

REPLAT OF
ALL OF LOTS 7, 8, 9, & 13, AND PART OF LOTS 3, 4, 10, & 11, ALL IN BLOCK 14 MOTT'S MAP, OLD TOWN CITY OF COMMERCE DAVID ANDERS SURVEY, A-31 HUNT COUNTY, TEXAS

DATE: JULY 9, 2018
REVISED JANUARY 3, 2019

"Exhibit B"

MINUTES

Planning and Zoning Commission

February 26, 2019 - 5:30 p.m.
Commerce City Hall
1119 Alamo Street, Commerce, TX 75428

Members Present:	Carolyn Trezevant, Jonathan Myers, Terry Harris, Thomas Deaton, Michelle Martinez, Henry Ross, Gary Thompson
Members Absent:	None
City Staff Present:	Anna Holt
Others Present:	Nick Woodall, Phil Milford, Rusty Umstead, Ajay Sheladia, Don and Jaqueline Morton, Roy and Cecile Moody, Dennis Anderson, Willie Blow, Alton Biggs, Harry Wade, Suzanne Giossi

1. **Call to Order:**
Chairwoman Trezevant called the meeting to order at 5:30 p.m.

2. **Public Hearing and Consideration of a Request by Nick Woodall, Pangea Real Estate, LLC., for a Change in Zoning from R10 Single Family Dwelling District to A2 Apartment Dwelling District for 1) Property ID: 213538, Legal Description: S3620 Indian Creek Addition #6, Lot 1, Acres .319; 2) Property ID: 213539, Legal Description: S3620 Indian Creek Addition #6, Lot 2, Acres .34; 3) Property ID: 213540, Legal Description: S3620 Indian Creek Addition #6, Lot 3, Acres .344; 4) Property ID: 213541, Legal Description: S3620 Indian Creek Addition #6, Lot 4, Acres .327; and 5) Property ID: 213542, Legal Description: S3620 Indian Creek Addition #6, Lot 5, Acres .428, located on Washington Street, Commerce, TX 75428:**
City Staff Anna Holt initiated the conversation stating that her department had received an application requesting the rezoning of five lots along Washington Street just south of Charity Road across from the Commerce ISD Administration Building. The subject lots were recently purchased by Pangea Real Estate, and the rezone is a request for all five lots to be rezoned from R10 Single-Family Dwelling District to A2 Apartment Dwelling District. Ms. Holt shared that the idea behind the rezone request is to achieve a more developable property which would allow the developer to combine all five lots into one lot permitting the developer to build his development across all five lots – if the rezone request is approved, the developer would come back with a replat request to combine all five lots into one lot. Ms. Holt stated that as the reviewing City Staff, she had evaluated the rezone request along with the subject lots, and based on zoning context, recommended denial of the rezone request since the surrounding properties are primarily single-family use. She indicated that City Staff has previous experience with Pangea Real Estate and likes the project along with the fact that the developer is enjoyable to work with, and the quality of their work is pristine, so again, the recommendation of denial is based solely on zoning context.

Chairwoman Trezevant stated that in the past, the Planning and Zoning Commission has denied rezoning on properties – one on Charity Road where Mack Doster wanted to build duplexes, and some of the Commission's concern was that adjacent areas were R10 Single-Family. The other denial was to Sue Davis who wanted to build a duplex at the corner of Charity and either Arapaho or Choctaw – that was denied because of surrounding properties being R10 and drainage concerns.

Chairwoman Trezevant asked the applicant, Nick Woodall, to speak. Mr. Woodall stated that the proposed project for the subject property is not a giant apartment complex at all explaining that the project consists of little mini dorms like those built out on Highway 11, and they look like a little cottage house. Mr. Woodall indicated that he did not build big apartment complexes at all and commented that the members had pictures of the mini dorms. Mr. Woodall stated that he felt that the project would be a good buffer zone as they would look like little homes tucked into the trees across from the Commerce ISD building. Mr. Woodall stated that the lots are unusual in shape which is why he would ultimately come back for a replat because the lots are very long and very narrow making it hard to even put a house with a garage on some of the lots.

Member Deaton wanted to know if the proposed structures compared to any homes recently built along Charity Road. Mr. Woodall responded that the structures he plans to build are what he calls a cottage bungalow style like the ones he built on Highway 11 close to the City Park. Member Martinez asked if the intent of the project is to provide housing for college students. Mr. Woodall replied that it was explaining that each mini dorm is comprised of four bedrooms, four closets, and four bathrooms, and the students would share the central area of kitchen, dining, and living room. Each bedroom has its own thermostat. Mr. Woodall continued that they use all local contractors.

Chairwoman Trezevant commented that she had previously toured one of Mr. Woodall's mini dorm homes when they were first building on Highway 11 [Maple Street] and found that they were attractive and well built. Mr. Woodall stated that they have had a good response from the college students saying that they really have enjoyed them and appreciate the design with a lot of privacy but flexibility of design. Chairwoman Trezevant asked if the all the mini dorms on Highway 11 were occupied. Mr. Woodall replied that there were all occupied except for one house which only has one occupant currently because the other three students dropped out of school, and that's the only reason they left – all of the homes were full when they first started.

Member Harris asked Mr. Woodall if the site plan was the final layout. Mr. Woodall responded that it was not – just an initial proposal of what the architect came up with. Member Harris commented that one lot didn't appear to have anything on it. Mr. Woodall stated that it could be the case that the lot is being used for off-street parking with the architect taking the drainage into consideration. Member Deaton asked who is responsible for maintaining the mini dorms. Mr. Woodall replied that he is responsible.

Chairwoman Trezevant opened the public hearing at 5:42 p.m.

Don Morton of 2633 Charity Road asked if Mr. Woodall was going to have all the drainage from his project drain off into the creek stating that there is already a drainage issue with the creek which is slowly washing his property away, and he is going to have to replace fencing this year on the southwest corner and west part of his property. Mr. Morton stated that the previous owner of his property was a concrete man, and he lined the creek with broken up giant pieces of concrete which the creek is now washing away. Mr. Morton wanted to know who will be responsible for maintaining the drainage ditch and is Mr. Woodall's property going to drain into the creek. Mr. Morton stated that Mr. Woodall's property didn't currently drain off into the creek, but down Washington Street. Mr. Woodall responded that he understood since he lives on the Sabine Creek and has the same situation. Mr. Woodall stated that the way he understood the property to drain is towards the street as opposed to the other way, but if that wasn't the case, he would have the engineer look at it. Mr. Morton continued to state that the proposed home is a dormitory style which is not single-family, and he is totally against the rezoning of the property. He stated that he does not want multi-family dwellings or dormitory style homes built in his area.

Cecile Moody of 2619 Charity Road stated that it's very quiet on Charity Road and didn't feel that the proposed project would be fitting for the area along with the amount of traffic the mini dorms would create compounded by the already existing traffic caused by CISD, and she is against the rezone. Dennis Anderson of 2616 Charity Road stated that he is against the proposed rezone, and the zone should remain single-family. Willie Blow of 2624 Charity Road stated because of the amount of water and traffic along Washington Street and the surrounding single-family properties, the proposed rezone doesn't fit in. Alton Biggs of 2006 Creekview Drive stated that he is against the rezone. Harry Wade of 2628 Charity stated that he is against the rezone. Suzanne Giossi of 2701 Charity Road stated that she spends a lot of time taking care of her home and a lot of money paying property taxes and considering the density, noise, and water issues along with traffic and wear and tear on the roads and poor road maintenance, she is against the rezone.

Chairwoman Trezevant closed the public hearing at 6:01 p.m.

Member Martinez clarified that the applicant is requesting the subject lots to be rezoned to a multi-family zone and is not classifying the proposed structures as single-family. Member Martinez stated that there are things that should be considered such as the property owners that are there right now, the current zoning, and whether or not the property owners would suffer any loss or lose any enjoyment in their homes and properties. She continued to say that the property owner's concerns about drainage and putting more impact on that area with building the proposed type of homes should be also considered. Member Martinez stated that it's a great project but not sure if it's a great project for that specific area. Taking all these things into consideration, even with the CISD building close by, she felt like the proposed project would have a heavy impact on that area. Member Martinez made a motion to recommend denial seconded by Member Ross, and the vote carried unanimously.

3. **Public Hearing and Consideration of a Request by Ajay Sheladia, Bal Munkund, Inc., for Approval to Replat All of Lots 7, 8, 9, & 13, and Parts of Lots 3, 4, 10, & 11 of Block 14, Acres 2.026, Mott's Map, Old Town of City of Commerce, David Anders Survey, A-31 Hunt County, Texas, located at 708 Sycamore Street, Commerce, TX 75428:**
Ms. Holt stated that the request is for a replat of the subject property combining all the lots into one lot for a multi-family development. The replat consists of four whole lots and four partial lots. Ms. Holt indicated that there was a second item on the agenda concerning the replat consisting of a variance request. She explained that when the four partial lots were sold off and added to the four whole lots, the four partial lots didn't go through the appropriate replatting process, so the property owners owning the remainder of the four partial lots are required to approve the replat since their property is essentially being replatted as well. It was Ms. Holt's understanding that the applicant had pursued obtaining the needed approval from the four property owners but hasn't been successful. She continued to explain that the Commerce Subdivision Ordinance includes a provision to permit the request of a variance to the requirement of having these property owners approve the replat – the Subdivision Ordinance governs the replat process. Ms. Holt stated that she notified the applicant of the provision, and as a result, the applicant has requested the variance via letter which was provided in the members' agenda packets. Ms. Holt closed that she recommended approval of the replat conditional on the approval of the requested variance for which approval was also recommended.

Chairwoman Trezevant asked the developer to speak. Phil Milford, the property owner's builder, stated that the proposed plan is to build multiple smaller single-story apartment buildings. Mr. Milford stated that, effectively, the subject property has been one lot for some time, but that the City had informed him the property needed to be appropriately replatted. Rusty Umstead, the property owner's Realtor, stated they had attempted to contact the four property owners. She said that one property owner didn't understand why they had to sign anything; a second one told them to go away and never come back; and, the remaining two property owners she hasn't been able to get any response from.

Chairwoman Trezevant opened the public hearing at 6:20 p.m. Being no public present to speak on the matter, the public hearing was closed at 6:21 p.m.

Member Martinez made a motion to recommend approval of the replat conditional on the approval of the requested variance seconded by Member Thompson, and the vote carried unanimously.

4. **Public Hearing and Consideration of a Request by Ajay Sheladia, Bal Munkund, Inc., for Approval of a Variance from Section 2.6(B)(1) of the City of Commerce Subdivision Ordinance Relating to the Request for Approval to Replat of All of Lots 7, 8, 9, & 13, and Parts of Lots 3, 4, 10, & 11 of Block 14, Acres 2.026, Mott's Map, Old Town of City of Commerce, David Anders Survey, A-31 Hunt County, Texas, located at 708 Sycamore Street, Commerce, TX 75428:**
Chairwoman Trezevant opened the public hearing at 6:23 p.m. Being no public present to speak on the matter, the public hearing was closed at 6:24 p.m.

Member Martinez made a motion to recommend approval of the requested variance seconded by Member Thompson, and the vote carried unanimously.

5. **Adjourn:**

Member Ross made a motion to adjourn seconded by Member Harris, and the vote carried unanimously. The meeting adjourned at 6:25 p.m.

Carolyn Trezevant

Chairwoman Carolyn Trezevant

Anna M. Holt

Anna M. Holt, Development Specialist

March 26, 2019

Date

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

THIS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the 17th day of December, 2019, by and between THE CITY OF COMMERCE, TEXAS, a Texas home rule municipal corporation (the "City"), whose address is 1119 Alamo Street, Commerce, Texas 75428, and **Sheladia Ajay** (the "Developer"), whose address is **708 Sycamore Street** Commerce, Texas 75428 (the City and Developer shall be collectively referred to herein as the "Parties").

RECITALS

WHEREAS, Developer owns certain real property located in the City, being more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Developer intends and proposes to construct or renovate improvements on the Property (the "Project"); and

WHEREAS, the City has established a program in accordance with Chapter 378, Texas Local Government Code, Article III, Chapter 52-a of the Texas Constitution, and Chapter 380 of the Texas Local Government Code, under which the City has the authority to make grants of public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the City, including fulfilling a critical need for all types of housing within the City; and

WHEREAS, the City Council of the City of Commerce adopted Resolution No. 19-37 on August 20, 2019, authorizing a program for renovation incentives to promote local economic development and to stimulate businesses and commercial activity under Chapters 378 and 380 of the Texas Local Government Code; and

WHEREAS, the City Council established and set boundaries in said Resolution No. 19-37 for the Neighborhood Empowerment Zone under Chapter 378 of the Texas Local Government Code, and the Property is located in that zone; and

WHEREAS, consistent with Article III, Chapter 52-a of the Texas Constitution, Chapter 378 and Chapter 380 of the Texas Local Government Code, the City has made specific proposals to Developer for the purposes of inducing the Developer to advance the public purposes of developing and diversifying the economy; and

WHEREAS, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Article III, Chapter 52-a of the Texas Constitution, Chapter 378 and Chapter 380 of the Texas Local Government Code, the Developer has agreed to comply with certain conditions for receiving those benefits, including the design and construction of the Project in accordance with the City's building code; and

WHEREAS, City has concluded and hereby finds that this Agreement embodies an eligible program and clearly promotes economic development in the City and, as such, meets the requisites

under Chapters 378 and 380 of the Texas Local Government Code and further, is in the best interests of the City and Developer; and

WHEREAS, City has concluded and hereby finds that this Agreement embodies an eligible program and clearly promotes economic development in the City and, as such, meets the requisites under Chapters 378 and 380 of the Texas Local Government Code and further, is in the best interests of the City and Developer; and

WHEREAS, in consideration of the design and timely construction of the Project by Developer, which will bring additional sales tax and ad valorem tax revenues to the City and additional jobs resulting from the construction and renovation of the Properties, the City desires to make a grant to the Developer as provided in this Agreement; and

WHEREAS, the Parties desire to enter into an agreement to provide the terms and conditions by which the Project can be renovated; and

WHEREAS, the City will use available revenues calculated based on the increase in ad valorem taxes generated from the Project to provide the Cash Rebate Incentive (as defined below), to the Developer as provided in this Agreement; and

WHEREAS, Developer understands and agrees that: (a) in agreeing to future Cash Rebate Incentive and to receipt of other benefits pursuant to the Incentive Program, City is relying upon Developer's representations, warranties and agreements, as set forth and provided for in this Agreement; and (b) Developer shall be and shall remain subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

ARTICLE I

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

a. Ad Valorem Taxes. "Ad Valorem Taxes" means the amount of City of Commerce ad valorem real property taxes timely paid by Developer or the subsequent owner on the Project for any tax year for which Cash Rebate Incentive is to be paid under this Agreement. For the purpose of this Agreement, "Ad Valorem Taxes" does not include taxes levied by the Hunt County, Hunt County Medical District, Commerce Independent School District, or any other taxing entity.

b. Affiliate. "Affiliate" means (i) all persons, corporations or other entities, if any, controlled by Developer; (ii) all persons, corporations or other entities, if any, which control Developer ("Parent"); and (iii) all persons, corporations, or other entities controlled

by a Parent. As used in this definition of Affiliate, control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise.

c. Cash Rebate Incentive ("CRI"). "Cash Rebate Incentive" means a grant from any source of revenue available to the City for a qualifying Project as defined herein, however, the amount of such payments shall be limited solely to the amount of increased City property taxes assessed and paid as a result of the new assessed taxable value created by the Project for the year for which the increase in Ad Valorem Tax is assessed, paid in the following tax year after improvements are completed. Qualifying residential property shall be eligible for the CRI for one (1) year, unless the residential is owner-occupied single family, in which case the CRI shall be paid for three (years) following completion.

d. City. "City" means the CITY OF COMMERCE, TEXAS. For purposes of this Agreement, City's address is 1119 Alamo, Commerce, Texas 75428.

e. Developer. "Developer" means __Sheladia Ajay_____, whose address is _ 708 Sycamore Street Commerce, Texas 75428.

f.

g. _____, its successors and assigns.

h. Effective Date. "Effective Date" means the date upon which this Agreement has been fully executed by all signatories hereto.

i. Ineligible Improvements. "Ineligible Improvements" are determined by the City in its sole discretion and include, but are not limited to:

a. New pools, hot tubs, spas or water features:
b. Irrigation systems;
c. Detached accessory buildings;
d. Garage enclosures;
e. Carports;
f. Solar panels; and
g. Landscaping features.
h. Office, retail stores, restaurants or other commercial or industrial use.

j. Project. "Project" means Developer's construction or remodel of improvements on residential real property in the City of Commerce.

k. Property(ies). "Property" or "Properties" means certain real property owned by Developer, and more particularly described in Exhibit A, attached hereto and incorporated herein for all purposes.

l. Property Revenue. "Property Revenue" means the amount of City ad valorem taxes generated from the Property and collected by the City from one hundred percent (100%)

of the portion of the City's taxes levied and collected by the City on the Property during the term of this Agreement.

m. Related Documents. "Related Documents" means and include without limitation all ancillary agreements and all other instruments and documents relating to the subject matter of this Agreement, whether now or hereafter existing, executed in connection with Developer's or Affiliate's obligations to City.

n. Term of Agreement. "Term of Agreement" shall mean four (4) years or until such earlier mutual termination as such is described herein.

ARTICLE II
CONSTRUCTION OF THE PROJECT

2.1 The Project. The Project, as defined herein, is located on the Property listed on Exhibit A, within the City. The Project may include the construction or renovation of one or more structures and related infrastructure. The Project for purposes of this Agreement may not include Ineligible Improvements, although such improvements may be placed on the Property if otherwise allowed under City ordinances or state statutes.

2.2 Construction and Design of the Project. The Developer shall perform, or cause to be performed the design, site work and related improvements necessary for the construction or renovation of the Project. The Developer shall perform all work on the Project in a good and workmanlike manner and shall be subject to all development and construction standards and ordinances promulgated by the City or other governmental authorities.

2.3 Government Requirements and Approvals. Developer will apply for and use its best efforts to obtain, at its own expense, any and all necessary subdivision plats, permits, licenses, variances, and approvals that are necessary to construct the Project, including any environmental controls. Developer shall satisfy all permitting requirements, including but not limited to building permitting requirements.

2.4 Performance and Completion of Construction. Developer shall construct the Project in accordance with this Agreement. The Project may include construction of one or more single family detached residential structures and related infrastructure or other residential use.

Developer shall be subject to audit (by the City or its designee) for the term of this Agreement.

2.6. Indemnity and Insurance.

TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HERETO SHALL INDEMNIFY, SAVE AND HOLD HARMLESS THE OTHER PARTY, ITS ELECTED OFFICIALS, OFFICERS, AGENTS, ATTORNEYS AND EMPLOYEES, AS WELL AS THE DIRECTORS, OFFICERS, AGENTS, AND ATTORNEYS (COLLECTIVELY, THE "INDEMNITEES") FROM AND

AGAINST: (I) ANY AND ALL CLAIMS, DEMANDS, ACTIONS OR CAUSES OF ACTION THAT ARE ASSERTED AGAINST ANY INDEMNITEE BY A THIRD-PARTY RELATING TO THE OTHER INDEMNITEE' S RESPONSIBILITIES OR OBLIGATIONS UNDER THIS AGREEMENT (II) ANY ADMINISTRATIVE OR INVESTIGATIVE PROCEEDING BY ANY GOVERNMENTAL AUTHORITY AGAINST AN INDEMNITEE DIRECTLY OR INDIRECTLY RELATED, TO A CLAIM, DEMAND, ACTION OR CAUSE OF ACTION, ARISING FROM THE OTHER INDEMNITEE'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER; AND (III) ANY AND ALL LIABILITIES, LOSSES, COSTS OR EXPENSES (INCLUDING ATTORNEYS' FEES AND DISBURSEMENTS) THAT ANY INDEMNITEE SUFFERS OR INCURS AS A RESULT OF ANY OF THE FOREGOING. IF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS ASSERTED AGAINST ANY INDEMNITEE, SUCH INDEMNITEE SHALL PROMPTLY NOTIFY THE OTHER INDEMNITEE, BUT THE FAILURE TO SO PROMPTLY NOTIFY SUCH OTHER INDEMNITEE SHALL NOT AFFECT SUCH INDEMNITEE'S OBLIGATIONS UNDER THIS PARAGRAPH UNLESS SUCH FAILURE MATERIALLY PREJUDICES SUCH INDEMNITEE'S RIGHT TO PARTICIPATE IN THE CONTEST OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION, AS HEREINAFTER PROVIDED. IF REQUESTED BY THE INDEMNITEE HAVING THE OBLIGATION TO INDEMNIFY IN WRITING, SO LONG AS NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING, SUCH INDEMNITEE SHALL IN GOOD FAITH CONTEST THE VALIDITY, APPLICABILITY AND AMOUNT OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION AND SHALL PERMIT THE INDEMNIFYING PARTY TO PARTICIPATE IN SUCH CONTEST. ANY INDEMNITEE THAT PROPOSES TO SETTLE OR COMPROMISE ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION OR PROCEEDING FOR WHICH THE OTHER INDEMNITEE MAY BE LIABLE FOR PAYMENT OF INDEMNITY HEREUNDER SHALL GIVE SUCH INDEMNITEE WRITTEN NOTICE OF THE TERMS OF SUCH PROPOSED SETTLEMENT OR COMPROMISE REASONABLY IN ADVANCE OF SETTLING OR COMPROMISING SUCH CLAIM OR PROCEEDING AND SHALL OBTAIN SUCH INDEMNITEE'S CONCURRENCE THERETO.

ARTICLE III
INCENTIVES and REQUIREMENTS

3.1 Sales Tax Refund. City shall refund the amount of municipal sales tax received from sales on the Property within a Project for a period of ten (10) years.

3.2 Property Tax. Municipal Property Taxes on the Property are hereby rebated as Cash Rebate Incentive's.

3.3 Single Family Incentives. In the case of single-family development, the following incentives are authorized:

a. Water and Sewer tap fees are waived if there is no utility cut required;

b. Alternative off-street parking requirements shall be:----------
---

3.4 Alternative Materials and Methodologies. Alternative construction methodologies and alternative building materials are authorized as follows:_____

_____

3.5 Fees. Fees related to the construction of buildings are amended as follows:
Not Applicable □ or Specific Fees Waived: all associated permit fees, water tap fees, and sewer tap fees.

_____

_____

3.6 Requirements: baseline performance standards for the Project include the following: ----
Energy Star □_____
LEED Certified □_____
Other: □_____
Not Applicable □_____

ARTICLE IV
REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

4.1 Representations, Warranties and Obligations of Developer. Developer covenants and agrees that, while this Agreement is in effect, Developer shall comply with the following terms, conditions and agreements:

a. Developer agrees to make, execute and deliver to City such other documents and agreements as City or its attorneys may reasonably request relating to the subject matter hereof.

b. As a further condition to the receipt of any incentive, Developer shall certify that Developer is not in default of any provision of this Agreement. Developer shall not be entitled to a rebate or abatement if an event of default exists; however, upon timely curing any default, payment shall issue..

c. Developer agrees to perform and comply in all material respects with all terms, conditions, and provisions set forth in this Agreement and Related Documents between Developer and City .

d. Developer shall at all times comply with all federal, state, and local laws, ordinances, rules, regulations and orders governing the applicable duties of Developer under this Agreement.

e. Developer shall not be delinquent in the payment of any taxes to any city, county, school district, state, federal or any other taxing jurisdiction.

f. Developer shall not have any active and/or open cases with the Building Standards Commission. Any unresolved case with the Commission will void the agreement.

g. Developer, its subsidiary, affiliate and parent companies shall forebear in instituting any suit, claim or legal action of any kind or nature against City, its officials, officers, employees, agents or elected officials as a named party, and shall not be a party to any litigation wherein City, its officials, officers, employees, agents or elected officials are a named party and its position in such litigation is contrary to the position of the City, its officials, officers, employees, agents or elected officials.

4.2 Representations, Warranties and Obligations of City.

a. City shall fund all requests so long as Developer (i) shall not be in default of any provision of this Agreement or any Related Document; (ii) upon the express condition that Developer shall have completed all real property improvements represented and contemplated in Developer's original application ; and (iii) Taxes and fees were timely paid (by January 31st) for the annual period.

ARTICLE V
DEFAULT

5.1 Events of Default by Developer. Each of the following shall constitute an Event of Default by Developer under this Agreement:

a. A violation, failure to perform, or breach by the Developer of any covenant, warranty, duty, indemnity, or obligation of the Developer under this Agreement which has not been cured within thirty (30) days of written notice by City to Developer.

b. Any warranty, representation or statement made or furnished to City by or on behalf of Developer under this Agreement or the Related Documents which was false or misleading in any material respect, either now, in the future, or at the time made or furnished, and Developer fails to cure same within thirty (30) days after written notice from City describing the violation, or if such violation cannot be cured within such 30-day period in the exercise of all due diligence, then if Developer fails to commence such cure within such 30-day period or fails to continuously thereafter diligently prosecute the cure of such violation; or if Developer learns that any such warranty, representation or statement has become false or misleading at the time that it was made, and Developer fails to provide written notice to City of the false and misleading nature of such warranty, representation or statement within ten (10) days after Developer learns of its false or misleading nature.

c. The dissolution or termination of Developer's existence as a going business, Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment of all or substantially all of the assets of Developer for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer unless, in the case of involuntary proceedings, such proceedings are

discharged within sixty (60) days after filing, any of which occur prior to the completion of the Eligible Project.

d. Failure of Developer or Affiliate to comply with or to perform any other term, obligation, covenant or condition contained in Related Documents or any other written agreement affecting the obligations of Developer in this Agreement, and Developer or Affiliate, as the case dictates, fails to cure such failure within thirty (30) days after written notice from City describing such failure, or if such failure cannot be cured within such 30-day period in the exercise of all due diligence, then if Developer or Affiliate fails to commence such cure within such 30-day period or fails to continuously thereafter diligently prosecute the cure of such failure.

5.2 Events of Default by City. The failure of City to remit CRI payment to Developer, after performance by Developer, within the time prescribed herein shall constitute default.

5.3 Remedies. If any Event of Default by Developer shall occur and shall not be cured within the time period prescribed, all commitments of City under this Agreement immediately will terminate (including any obligation to make further CRI payments regardless of the date of default), all without further notice to Developer (except as may otherwise be required by specific provision hereunder), at the option of City, except for an Event of Default described in the subsection 5.1. c., above, in which case such termination shall be automatic and not optional. If any Event of Default by City shall occur and shall not be cured within the time period prescribed, Developer may terminate this Agreement and seek damages for such default based solely on the amount of any payments owing by City, as such payments may accrue.

ARTICLE VI
MISCELLANEOUS PROVISIONS

6.1 Immunity. The Parties agree that the City of Commerce has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

6.2. Assignment/Non-Transferable. The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the City of Commerce.

6.3 Successors and Assigns. The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

6.4 Execution and Consideration. This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

6.5 Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt

requested, or by delivering the same in person to such Party via facsimile or a hand–delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

To City of Commerce:

City of Commerce
Attn: City Manager
1119 Alamo
Commerce, TX 75428

With Copy to:

Mr. Charles Anderson
Messer, Fort & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, TX 75034

To Developer:

AJAY SHELADIA
825 CRESTVIEW DR.
COPPELL TX. 75019

6.6 Cumulative Remedies. All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

6.7 Waiver of Breach. A waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.

6.8 Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

6.9 No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

6.10 Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Parties.

6.11 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of this Agreement is for the Project only and not any other matters that may exist between the Parties past, present or future.

6.12 Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Hunt County, Texas.

6.13 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

6.14 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

6.15 Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

6.16 Force Majeure. Neither Developer nor the City shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.

6.17 Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

6.18 Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision

hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.19 Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

EXECUTED this the 17th day of December, 2019.

DEVELOPER:

THE CITY OF COMMERCE, TEXAS

By: _____
WYMAN WILLIAMS, MAYOR

ATTEST:

_____
Molly Jacobsen, City Secretary

EXHIBIT A
Legal Description of the Property

S4380 ORIG TOWN OF COMMERCE BLK 14 LOT 8R ACRES 2.026 REPLAT