

RESOLUTION NO. 20 - 03

**A RESOLUTION ESTABLISHING A LIEN FORGIVNESS AGREEMENT
WITH ASHLEY HAMMONS FOR PROPERTY LOCATED AT 1014
ENLOW CIRCLE (PROPERTY ID #117100) IN THE CITY OF
COMMERCE AND AUTHORIZING THE CITY MANAGER TO
EXECUTE ASSOCIATED AGREEMENTS**

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall, on the 21st day of January 2020, at 6:00 p.m.; a majority of council members being present and constituting a quorum, the following Resolution was adopted:

WHEREAS, the City of Commerce has historically maintained a practice of placing liens on real property for which service was provided to remedy a code violation;

WHEREAS, there are many properties in the City of Commerce that have accumulated liens and interest to such an extent as to cause the property to become unattractive to maintain, acquire or improve; and

WHEREAS, the City of Commerce desires maintenance and investment in real estate and property improvements within the City; and

WHEREAS, the City of Commerce has the ability through Chapter 380 of the Local Government Code to enter into agreements for the purpose of economic development

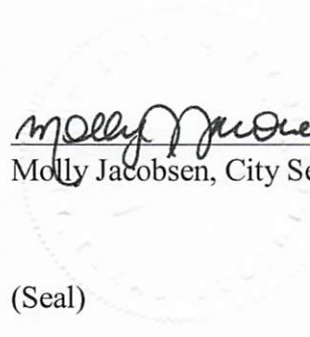
THEREFORE, BE IT RESOLVED, that the City Council establishes a lien forgiveness program for all properties in the City currently encumbered by liens and

BE IT FURTHER RESOLVED, the City Manager or his designee is authorized to execute the agreement shown in Exhibit A, or one substantially similar thereto for the purpose of lien forgiveness to facilitate the maintenance and improvement of the private structures within the City for the overall economic growth and development of the City of Commerce, Texas. ;

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 21st day of January 20.

ATTEST:

CITY OF COMMERCE, TEXAS


Molly Jacobsen
Molly Jacobsen, City Secretary

Wyman Williams
Wyman Williams, Mayor

(Seal)

APPROVED AS TO FORM:

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Texas, do hereby certify that the above is a true and correct copy of a resolution and that the same has not been repealed and is in full force and effect.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

Exhibit A – Lien Forgiveness Program Agreement

**CHAPTER 380 AGREEMENT FOR SUBSTANTIAL IMPROVEMENT OF PROPERTY
AND LIEN FORGIVENESS**

This CHAPTER 380 AGREEMENT ("Agreement") is made by and between The City of Commerce, Texas ("City") and Ashley Hammons (the "Home Builder").

WHEREAS, the City Council of the City of Commerce, Texas ("City Council") has investigated and determined that it is in the best interest of the City and its citizens to encourage programs, including programs for incentivizing land development to promote local economic development and stimulate housing, business and commercial activity in the City pursuant to Chapter 380, Texas Local Government Code, as amended ("Chapter 380"); and

WHEREAS, the Home Builder desires to improve substantially certain real estate within the City (hereinafter referred to as Property) which is more particularly described in Exhibit A attached hereto; and

WHEREAS, the City desires to encourage investment in the City and does not wish its liens, which are more particularly identified and described in Exhibit B attached hereto, to unduly limit the improvement and redevelopment of real property in the City; and

WHEREAS, the Home Builder will be engaged in the business of purchasing building materials for its use on a substantial improvement project within the City; and

WHEREAS, the Home Builder desires to purchase and use new building materials within the City that will generate additional economic development and tax revenue for the City; and

WHEREAS, with the approval of this Agreement, the City desires a program authorized by Chapter 380 of the Texas Local Government Code to encourage local economic development and induce the generation of local use tax; and

WHEREAS, the City has determined that making an economic development grant to the Home Builder in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I - DEFINITIONS

1.01 For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Commencement Date" shall mean the date of the first permit issued for construction on the Property.

"Effective Date" shall mean the first date on which both parties have signed this Agreement .

"Force Majeure" shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorism, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of the party.

"Lien Forgiveness Amount" shall mean the reduction in the value of the lien as determined by applying a defined formula to the New Appraised Value of the improvement after construction is completed.

"New Appraised Value" shall mean the appraised dollar value assigned to the Improvements on the Property by the Hunt County Appraisal District, unless the Home Builder elects to hire a certified appraiser to assign a value to the property.

"Property" shall mean the residential structure located at 1014 Enlow Circle, Commerce, TX 75428 and shall not encompass accessory structures also located at this address

"Taxable Items" shall have the same meaning assigned by Sections 151.010 and 151.0101, TEX. TAX CODE, as amended.

ARTICLE II - TERM

2.01 Term. The term of this Agreement shall begin on the Effective Date and continue for a three (3) year period,

2.02 This Agreement shall terminate at the end of three (3) years or at such time as the Home Builder completes the proposed improvements and receives a release of lien from the City.

2.03 This Agreement shall terminate at any time upon which the Home Builder sells 100% of his or her interest in the property. Sales to other entities in which the Home Builder has any ownership or membership will not terminate the requirements of this Agreement. Benefits afforded to the Home Builder in this Agreement may not be transferred to any other owner or entity without the express written consent of the City.

2.04 On the Effective Date of this Agreement, the interest on the Liens shall stop accruing during the term of this Agreement. However, if there is no release issued during the term of this Agreement, any future release of such Liens will require the payment of any interest which would have accrued but for the existence of this Agreement.

ARTICLE III – RELEASE OF LIENS—OBLIGATIONS OF PARTIES

3.01 CITY. After completion of the Improvements by Home Builder, City will release the Liens according to the following formula:

$$(0.5 \times \text{Balance of Liens}) + (0.025 \times \text{Improvement New Appraised Value} \\ - \text{Current City Tax Bill for Improvement}) = \text{Lien Forgiveness Amount}$$

Following an appraisal either by the Hunt County Appraisal District or by a certified appraiser hired by the Home Builder, the value of City-held liens on the Property shall be reduced by the Lien Forgiveness Amount. If the Lien Forgiveness Amount exceeds the value of the City-held liens on the Property, the value of the liens will be reduced to \$0. Liens will be released by the City when the remaining value has been paid by the Home Builder.

3.02 Home Builder. During the term of this Agreement, Home Builder will make substantial improvements to the Property, which Improvements are more particularly described in Exhibit C attached hereto. After completion of the Improvements, Home Builder shall request in writing the release of the liens and submit proof of the actual expenditures for the improvements and an appraisal of the property which specifies the value of the property, including the improvements. In order to qualify for full or partial release of the liens, Home Builder must have expended at least twice the value of the liens.

3.03 Issuance of Release. After the City receives proof of expenditure and the appraisal, City shall have the opportunity to require other documentation and perform such inspections as it may reasonably deem proper. If Home Builder has met the terms of this Agreement, City shall issue releases within five (5) business days of determining Home Builder compliance and receiving any payment for the difference between value of the lien and the amount to be released under the formula. City will provide a copy of the Appraisal to the Hunt County Appraisal District.

ARTICLE IV – REQUIREMENTS FOR IMPROVEMENTS

The conditions contained in this Article IV are conditions precedent to the City's obligation to release its liens to the Home Builder.

4.01 Construction Material. To be eligible to receive forgiveness of the lien, the taxable improvement built on the Property must be at least 80% masonry, include a concrete driveway, and meet all zoning and development requirements, with or without approved variances.

4.02 The minimum value of the outstanding liens in favor of the City on the Property is \$1,000.

4.03 Code Violations. The Home Builder must agree to maintain the property consistent with the City's code of ordinances for the term of the Agreement. Any confirmation from the Municipal Court or the Building Standards Commission of a code violation will require the Home Builder to repay any rebate to the Purchase Price.

4.04 Tax Payments. The Home Builder must keep all property taxes to all entities paid in full for term of this Agreement.

4.05 Home Builder or the City shall not have an uncured material breach or default of this Agreement.

ARTICLE V - TERMINATION

5.01 In the event of a breach, the Home Builder shall be notified in writing that it is in breach. The Home Builder will have sixty (60) days in which to cure the breach. In the event the breach is uncured, this agreement may be terminated and the City is entitled to payment from the Home Builder equal to the running total of discounts applied to the value of the liens pursuant to this Agreement.

ARTICLE VI - MISCELLANEOUS

6.01 Binding Agreement. The terms and conditions of this Agreement are binding upon the parties to this agreement and their respective successors and permitted assigns. This Agreement may not be assigned without the express written consent of City.

6.02 Limitation on Liability. It is understood and agreed between the parties that the Home Builder and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. The Home Builder agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of the Home Builder's performance of the conditions under this Agreement.

6.03 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the parties.

6.04 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.05 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered sent via fax. If intended for City, to:

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

If intended for the Home Builder:

Attn: Ashley Hammons
7902 Traders Circle Greenville, TX 75402 (current address)

6.06 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.07 Governing Law. The laws of the State of Texas shall govern the Agreement; and this Agreement is fully performable in Commerce, Hunt County, Texas with exclusive venue for any action concerning this Agreement being in a court of competent jurisdiction in Hunt County, Texas.

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

6.09 Legal Construction. In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument and any such counterparts shall be deemed to be incorporated herein.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

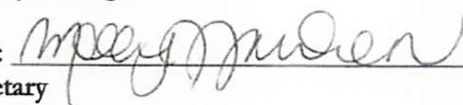
6.14 Dispute Resolution. Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The parties shall endeavor to resolve their claims by mediation. City and Home Builder shall share the costs of mediation equally. The mediation shall be held in Commerce, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

EXECUTED as of the 21st day of January, 2020.

THE CITY OF COMMERCE, TEXAS

By: 

Interim City Manager

ATTEST: 

City Secretary

EXECUTED as of the 2nd day of March, 2020.

By:  HOME BUILDER

ACKNOWLEDGMENTS

STATE OF TEXAS §
COUNTY OF HUNT §

This instrument was acknowledged before me on the 2nd day of March, 2020 by Ned Muse, Interim City Manager of The City of Commerce, Texas, on behalf of said city.

Name: Molly J. Jauden
Notary Public, State of Texas

My commission expires:

STATE OF TEXAS §
COUNTY OF HUNT §

This instrument was acknowledged before me on the 2nd day of March, 2020 by Ashley Hammons, a private citizen of Commerce, Texas.

Name: Molly J. Jauden
Notary Public, State of Texas

My commission expires: 12/27/2020