

AGENDA

BARTONVILLE COMMUNITY DEVELOPMENT CORPORATION MEETING

November 6, 2018

**BARTONVILLE TOWN HALL
1941 E. JETER ROAD, BARTONVILLE, TX 76226**

6:30 P.M.

A. CALL TO ORDER

B. CITIZEN PARTICIPATION

The purpose of this item is to allow citizens an opportunity to address the Bartonville Community Development Corporation Board on issues that are not the subject of a public hearing. Items which require a public hearing will allow citizens or visitors to speak at the time that item is introduced on the agenda. No formal action can be taken by the Board on items that are not posted on the agenda.

C. CONSENT ITEMS

1. Consider approval of the August 6, 2018, meeting minutes.
2. Consider approval of the September 12, 2018, meeting minutes.
3. Consider approval of the October 22, 2018, special meeting minutes.
4. Consider approval of the October 29, 2018, special meeting minutes.

D. AGENDA ITEMS

1. Public hearing and consideration and action on a Performance Agreement with Blue Pup Pub, LLC.
2. Update on development activity (new businesses, prospective businesses, expansion of businesses).
3. Discussion on marketing, promotional items, and advertising of local businesses.

F. FUTURE ITEMS

G. ADJOURNMENT

I hereby certify that the above agenda was duly posted on the Town Hall Bulletin Board on Friday, the 2nd day of November 2018, at 4:15 p.m.



Tammy Dixon, Town Secretary

The Corporation reserves the right to reconvene, recess, or realign the order of business at any time prior to adjournment.



AGENDA ITEM NO. 1

CONSENT ITEM

DATE: November 6, 2018

FROM: Tammy Dixon, Town Secretary

ITEM: Consider approval of the August 6, 2018, meeting minutes.

SUMMARY:

The Board held a meeting on August 6, 2018.

ATTACHMENTS:

Draft meeting minutes for August 6, 2018.

RECOMMENDED MOTION OR ACTION:

Move to approve the August 6, 2018, meeting minutes.

**THE BARTONVILLE COMMUNITY DEVELOPMENT CORPORATION MEETING
HELD ON THE 6th DAY OF AUGUST, 2018, AT BARTONVILLE TOWN HALL, 1941 E.
JETER ROAD, IN THE TOWN OF BARTONVILLE, COUNTY OF DENTON, TEXAS AT
6:30 P.M.**

The Bartonville Community Development Corporation met in a regular meeting with the following members present:

Jim Langford, Chair
Terry Rock, Vice Chair
Dwain Skrobarcek (*arrived at 6:37 p.m.*)
Jim Foringer
Berniece Pardue
Randy Van Alstine

with the following member absent:
Jeff Traylor

Also present: Tammy Dixon, Town and Board Secretary.

There constituting a quorum, the following business took place:

A. CALL TO ORDER

Chairman Jim Langford called the meeting to order at 6:30 p.m.

Chairman Langford introduced Jim Fay newly appointed board member effective October 1, 2018.

B. CITIZEN PARTICIPATION

There were none.

C. AGENDA ITEMS

1. Consider approval of the May 7, 2018, meeting minutes.

Randy VanAlstine moved to approve the May 7, 2018, meeting minutes. Terry Rock seconded the motion. The motion carried by vote of 5 to 0.

2. Update on development activity (new businesses, prospective businesses, expansion of businesses).

Ms. Dixon stated Firestone, Chase Bank, and Casa Mia Mexican Restaurant would be opening soon at the Lantana Town Center. She also stated a building permit was issued for the construction of 7-Eleven located at IT Neely and FM 407.

3. Discussion on aerial mapping project.

Ms. Dixon provided examples of the brochure maps. She stated the project would be completed in September.

4. Discussion on Community Guide and Marketing Material.

The board discussed updating the Community Guide and agreed it would be best to wait one year since there would be considerable amount of businesses opening within the next year.

Ms. Dixon stated the one page insert that was included in the *Go! Pages* Advertising brochure would be updated. She stated the brochure reaches approximately 45,000 households.

5. Discuss and consider approval of FY 18-19 Annual Plan.

The Board reviewed the draft annual plan.

Randy VanAlstine moved to approve the FY 18-19 Annual Plan. Bernice Pardue seconded the motion. The motion carried by vote of 6 to 0.

6. Discuss and consider approval of FY 18-19 Budget.

The Board reviewed the FY 18-19 Budget.

Bernice Pardue moved to approve the FY 18-19 Budget. Dwain Skrobarcek seconded the motion. The motion carried by vote of 6 to 0.

D. FUTURE ITEMS

Ms. Dixon stated the annual meeting with the Town Council, as required by the Bylaws, will be held on Tuesday, September 4, 2018, at 6:30 p.m.

E. ADJOURNMENT

Chairman Jim Langford adjourned the meeting at 7:50 p.m.

BCDC approved this the ____TH day of November 2018.

Approved:

Jim Langford, Chair

Attest:

Tammy Dixon, Town Secretary



AGENDA ITEM NO. 2

CONSENT ITEM

DATE: November 6, 2018

FROM: Tammy Dixon, Town Secretary

ITEM: Consider approval of the September 12, 2018, meeting minutes.

SUMMARY:

The Board held a meeting on September 12, 2018.

ATTACHMENTS:

Draft meeting minutes for September 12, 2018.

RECOMMENDED MOTION OR ACTION:

Move to approve the September 12, 2018, meeting minutes.

**THE BARTONVILLE COMMUNITY DEVELOPMENT CORPORATION MEETING
HELD ON THE 12th DAY OF SEPTEMBER, 2018, AT BARTONVILLE TOWN HALL,
1941 E. JETER ROAD, IN THE TOWN OF BARTONVILLE, COUNTY OF DENTON,
TEXAS AT 6:00 P.M.**

The Bartonville Community Development Corporation met in a regular meeting with the following members present:

Terry Rock, Vice Chair
Jim Foringer
Berniece Pardue
Randy Van Alstine

with the following members absent: Jim Langford, Dwain Skrobarcek, and Jeff Traylor

Also present: Tammy Dixon, Town and Board Secretary.

There constituting a quorum, the following business took place:

A. CALL TO ORDER

Vice Chairman Terry Rock called the meeting to order at 6:05 p.m.

B. CITIZEN PARTICIPATION

There were none.

C. PRESENTATION

Presentation and discussion regarding the property located at 96 McMakin.

Tim House, owner of the property located at 96 McMakin (Bartonville Store) presented his concept/vision of the property. He stated he was partnering with Chef Michael Smith to open a restaurant with a retail business. He explained Chef Michael would use a similar concept of the Meat Shop located in Dallas on Lovers Lane which is a butcher shop and eatery featuring Wagyu beef. He explained it would be a high-end meat shop/deli with a full-service bar as well as a retail section. He stated he planned to use the existing layout with a new floor plan.

Mr. House stated he estimated approximately \$350,000 worth of improvements and would be submitting a request for funding from the Board in the near future.

Mr. House answered questions from the Board.

D. AGENDA ITEMS

1. Consider approval of the August 13, 2018, meeting minutes.
No action was taken due to scrivener's error listing incorrect meeting date on agenda.

2. Consider approval of the September 4, 2018, annual meeting minutes.

Jim Foringer moved to approve the September 4, 2018, annual meeting minutes. Bernice Pardue seconded the motion. The motion carried with a vote of 4 to 0.

3. Update on development activity (new businesses, prospective businesses, expansion of businesses).

Ms. Dixon stated Shellman’s Liquor Store signed a lease with NewQuest for a space on the north side of FM 407 and was expected to open in January of 2019.

4. Discussion and direction on marketing, promotional items, and advertising of local businesses.

Ms. Dixon stated the aerial brochure maps would be delivered by September 21st. She discussed purchasing shirts with the Town logo and lapel pins. The shirts would be distributed to Board and Council members. Ms. Dixon was directed to bring back options and pricing.

Ms. Dixon presented an example of a two-page advertisement that could be included in the Go Pages, Lantana Living Magazine and/or the Argyle Living Magazine. The illustration is a sample the marketing company sent. She stated the language on page two would be changed to read “Experience Bartonville.”

DINING • SHOPPING • SERVICES

Business Spotlight

Golden Egg Cafe
Breakfast & Lunch

Golden Egg Cafe is a family owned, breakfast and lunch restaurant! We offer great atmosphere, exceptional service and delicious food and coffee!

We are dedicated to providing our customers with a comfortable and friendly dining experience every time! We're a local brunch spot where the staff is friendly, the food is tasty, and breakfast is served all day.

Our mission is to use the freshest ingredients available and buy from local vendors whenever we can. Most everything we serve is made from scratch, and with plenty of love. We care about good food, our community, the environment, and making people happy.

We offer a variety of gluten-free options, as well as a range of healthy choices, such as egg whites, fat-free cooking spray, organic items or a side of fruit instead of fresh brownies.

Hours: 6:30 am - 2:30 pm
2650 FM 407, Ste 163
Bartonville, TX 76026
Located in the Bartonville Town Center
940-241-2755

FARMER'S MARKET
Every Saturday 8am-Noon

OLD TOWN BARTONVILLE
McMakin & Jeter Road, West of FM 407

BARTONVILLE TOWN CENTER
2650 FM 407, Bartonville, TX

LANTANA TOWN CENTER
NWG FM 407 & Jeter Rd, Bartonville, TX

Experience BARTONVILLE

Experience LANTANA

Local Businesses:

- AT&T
- ATI Physical Therapy
- Bank of America (atx0300)
- Casa Mia Mexican Restaurant
- Cassandra & Co. Real Estate
- Chase Bank
- Dickey's PE Barbecue
- Domino's Pizza
- Farmer's Insurance
- Firestone
- Great Clips
- Hollywood Feed
- Kroger
- Fred Meyer Jewelers
- Lantana Eye Care
- Lantana Nail Spa
- Smile Up Dentistry
- Romney Pediatric Dentistry
- Starbucks
- Supercuts
- Terry's Donuts
- The Tutoring Center
- Takayo Samurai Japanese Restaurant
- Utown Salon

Other Businesses:

- 2-Even
- Adams Construction
- Arrowhead Operating
- Dr. Dan Foran
- Smiles of Texas
- Diner's Edge
- Edward Jones
- Emy Nails & Spa
- Gibbs Law Firm, P.A.
- GlobeX Logistics Inc.
- Golden Egg Cafe
- Grapes to Wine
- Imagery Media, Inc.
- Jim Bridges State Farm
- Johnny Kuehn Music
- Lantana Bookworks
- Lantana Water District
- Mary Br
- Nerica USA
- Pack 'N' Mail
- Palermo's Italian Cafe
- ProSoft Solutions
- Remon Acacia Salon
- Shah, Civil Construction
- Subway
- Texas Phone Works
- White Tail Dry Cleaners

She explained the cost categories were significantly reduced with a one-year commitment and stated the board could charge businesses a reduced rate to advertise in this section. The advertising sizes would be a quarter of a page with the Board covering the Business Spotlight each month with a different business.

Ms. Dixon also stated she was obtaining costs to advertise in the Cross Timbers Gazette and there was also the option to rent one of the billboards along FM 407.

Ms. Dixon was directed to bring back all costs and options to a future meeting.

F. FUTURE ITEMS

Ms. Dixon stated traffic counts would be conducted in October.

G. ADJOURNMENT

Chairman Jim Langford adjourned the meeting at 7:26 p.m.

BCDC approved this the ____TH day of November 2018.

Approved:

Jim Langford, Chair

Attest:

Tammy Dixon, Town Secretary



AGENDA ITEM NO. 3

CONSENT ITEM

DATE: November 6, 2018

FROM: Tammy Dixon, Town Secretary

ITEM: Consider approval of the October 22, 2018, meeting minutes.

SUMMARY:

The Board held a special meeting on October 22, 2018.

ATTACHMENTS:

Draft meeting minutes for October 22, 2018.

RECOMMENDED MOTION OR ACTION:

Move to approve the October 22, 2018, meeting minutes.

**THE BARTONVILLE COMMUNITY DEVELOPMENT CORPORATION MEETING
HELD ON THE 22nd DAY OF OCTOBER, 2018, AT BARTONVILLE TOWN HALL, 1941
E. JETER ROAD, IN THE TOWN OF BARTONVILLE, COUNTY OF DENTON, TEXAS
AT 6:30 P.M.**

The Bartonville Community Development Corporation met in a special meeting with the following members present:

Jim Langford, Chair
Terry Rock, Vice Chair
Dwain Skrobarcek
Jim Foringer
Berniece Pardue
Randy Van Alstine
Jim Fay

Also present: Tammy Dixon, Town and Board Secretary.

There constituting a quorum, the following business took place:

A. CALL TO ORDER

Chairman Jim Langford called the meeting to order at 6:32 p.m.

B. CITIZEN PARTICIPATION

There were none.

C. AGENDA ITEMS

1. Discuss and consider a funding request by Blue Pup Pub, LLC.

Ms. Dixon stated Tim House (AKA Blue Pup Pub, LLC) submitted a request for funding to assist in improvements to the Bartonville Store building located at 96 McMakin Road. Mr. House purchased the property from the Town and intends to utilize the building for a restaurant/retail business.

Mr. House and Chef Michael Smith made a presentation to the Board. Mr. House stated the refurbishment of the old building would turn what is currently a front-door eyesore into a well-maintained vintage building with a reminder of the Town's history. He was estimating exterior expenses of approximately \$190,000 which included removal of the gas canopy, repair to the building, parking area improvements, a new septic system, landscaping and patio enclosure addition. Mr. House was seeking a 50% match in the amount of \$90,500.

Mr. House stated the business would include a restaurant and retail business featuring high quality meats and cheeses, a butchery offering customized take-home cuts; a "home meal replacement" take out service, a full-service bar, music and other entertainment on an indoor stage,

and a retail area featuring food seasonings and local artisan wares. The business would create employment for five full-time employees and approximately five to ten part-time employees.

The Board deferred taking any action until after closed session discussions.

2. Discuss and consider a funding request by Cloud 9 Salon and Spa.

Kim Cloud, owner of Cloud 9 Salon and Spa in Flower Mound, made a presentation to the Board. Ms. Cloud stated she was seeking to purchase property located in Bartonville Town Center with FM 407 frontage to build an 8200 square foot two-story building to relocate her business to. She stated she would be investing over \$2.5 million dollars for the project. She stated she currently has 51 stylists. The new location will allow the addition of 16 more independent stylists along with the creation of 15 new job positions. The new location would bring additional ad valorem tax dollars to the town as well as sales tax on merchandise. She further stated the existing client base will be coming from other cities and would shop and dine in Bartonville.

Ms. Cloud answered questions from the Board.

The Board deferred taking any action until after closed session discussions.

Chairman Langford moved to closed session.

D./E. CLOSED/OPEN SESSION

The Board convened into a closed meeting at 7:16 p.m. pursuant to Texas Government Code Chapter 551, Section 551.087 and reconvened into open session at 8:16 p.m. to discuss matters relating to:

1. Deliberate funding request by Blue Pup Pub, LLC.

Bernice Pardue moved to authorize the BCDC attorney to prepare a performance agreement with Blue Pup Pub, LLC on the terms as discussed in closed session. Vice Chair Terry Rock seconded the motion. The motion carried by a vote of 7 to 0.

2. Deliberate funding request by Cloud 9 Salon and Spa.

Bernice Pardue moved to authorize staff to work with the application as discussed in closed session and to postpone this item to the next meeting. prepare a performance agreement with Blue Pup Pub, LLC on the terms as discussed in closed session. Jim Fay seconded the motion. The motion carried by a vote of 7 to 0.

CONTINUE AGENDA ITEMS:

3. Update on development activity (new businesses, prospective businesses, expansion of businesses).

Ms. Dixon stated Firestone had opened; Casamia Restaurant submitted an application for a health food permit and was expected to open in early November; and Tractor Supply had submitted a request to change the zoning of the property located at the northwest corner of E FM 407 and Hilltop Road from Agricultural to Rural Services.

4. Discussion on marketing, promotional items, and advertising of local businesses.

Ms. Dixon distributed copies of the new aerial map brochures which were funded by the CoServ Grant. She stated she would be delivering copies to Denmiss, LLC and to NewQuest.

Ms. Dixon stated the two-page advertisement in the *Go Pages* magazine that was discussed at the prior meeting was inadvertently published by the marketing company and there would be no charge to the Board. She stated it included the Business Spotlight for The Golden Egg Café.

F. ADJOURNMENT

Chairman Jim Langford adjourned the meeting at 8:36 p.m.

BCDC approved this the ___th day of November 2018.

Approved:

Jim Langford, Chair

Attest:

Tammy Dixon, Town Secretary



AGENDA ITEM NO. 4

CONSENT ITEM

DATE: November 6, 2018

FROM: Tammy Dixon, Town Secretary

ITEM: Consider approval of the October 29, 2018, meeting minutes.

SUMMARY:

The Board held a special meeting on October 29, 2018.

ATTACHMENTS:

Draft meeting minutes for October 29, 2018.

RECOMMENDED MOTION OR ACTION:

Move to approve the October 29, 2018, meeting minutes.

**THE BARTONVILLE COMMUNITY DEVELOPMENT CORPORATION MEETING
HELD ON THE 29th DAY OF OCTOBER, 2018, AT BARTONVILLE TOWN HALL, 1941
E. JETER ROAD, IN THE TOWN OF BARTONVILLE, COUNTY OF DENTON, TEXAS
AT 6:30 P.M.**

The Bartonville Community Development Corporation met in a special meeting with the following members present:

Jim Langford, Chair
Terry Rock, Vice Chair
Dwain Skrobarcek
Jim Foringer (*arrived at 6:37 p.m.*)
Berniece Pardue
Randy Van Alstine
Jim Fay

Also present: Tammy Dixon, Town and Board Secretary and Jeff Moore, Board Attorney.

There constituting a quorum, the following business took place:

A. CALL TO ORDER

Chairman Jim Langford called the meeting to order at 6:30 p.m.

B./C. CLOSED/OPEN SESSION

The Board convened into a closed meeting at 6:31 p.m. pursuant to Texas Government Code Chapter 551, Sections 551.071 and 551.087 and reconvened into open session at 7:27 p.m. to discuss matters relating to:

1. Consultation with Board Attorney and to deliberate funding request by Blue Pup Pub, LLC.
No Action Taken.
2. Consultation with Board Attorney and to deliberate funding request by Cloud 9 Salon and Spa.
No Action Taken.

D. CITIZEN PARTICIPATION

There were none.

E. AGENDA ITEMS

1. Public hearing to consider and take action upon the following project: to provide financial assistance in an amount not to exceed \$59,000.00 for the Blue Pup Pub, LLC, Restaurant improvements.

Chairman Langford opened the public hearing at 7:27 p.m.

Tim House, 96 McMakin, spoke in favor of the project.

Chairman Langford closed the public hearing at 7:27 p.m.

Jeff Moore explained that since the required notice had been published in an amount not to exceed \$59,000 and the board had desired to an increased amount, the notice would have to be republished and another public hearing would need to be scheduled.

Bernice Pardue moved to approve a performance agreement with Blue Pup Pub, LLC for the amount of \$66,750 and subject to revisions as discussed in closed session and subject to publication of notice and subsequent public hearing in compliance with the Development Corporation Act and approval by Town Council. Vice Chair Terry Rock seconded the motion. The motion carried by a vote of 7 to 0.

F. ADJOURNMENT

Chairman Jim Langford adjourned the meeting at 7:32 p.m.

BCDC approved this the ____TH day of November 2018.

Approved:

Jim Langford, Chair

Attest:

Tammy Dixon, Town Secretary



AGENDA ITEM NO. 5

REGULAR ITEM

DATE: November 6, 2018

FROM: Tammy Dixon, Town Secretary

ITEM: Public hearing and consideration and action on a Performance Agreement with Blue Pup Pub, LLC.

SUMMARY:

On October 22, 2018, the Board authorized the Board attorney to prepare a Performance Agreement between the Board and Blue Pup Pub, LLC to provide financial assistance for the Blue Pup Pub, LLC restaurant improvements.

On October 29, 2018, the Board approved the Performance Agreement in the amount of \$66,750 subject to revisions as discussed in closed session and subject to publication of notice and subsequent public hearing in compliance with the Development Corporation Act and approval by Town Council. The agreement includes the same a three-year clawback provision as other similar agreements requiring 2/3 repayment in the amount of \$44,500 after one year and 1/3 repayment in the amount of \$22,250 after two years.

BACKGROUND:

Blue Pup Pub, LLC (Tim House) purchased the property located at 96 McMakin from the Town and is opening a restaurant and retail business featuring high quality meats and cheeses, a butchery offering customized take-home cuts; a “home meal replacement” take out service, a full-service bar, music and other entertainment on an indoor stage, and a retail area featuring food seasonings and local artisan wares. The business would create employment for five full-time employees and approximately five to ten part-time employees.

Mr. House submitted a request for funding to assist in improvements to the exterior of the property which has been in a state of disrepair for many years. The exterior improvements are estimated at \$135,000 which included removal of the gas canopy, repair to the building, parking area improvements, landscaping and patio enclosure addition. Mr. House requested a 50% match grant.

The business would create employment for five full-time employees and approximately five to ten part-time employees.

In accordance with the Development Corporation Act, Section 505.159(a) of the Texas Local Government Code, a public hearing is required to receive public input regarding the funding of the project.

Section 505.158 of the Texas Local Government Code provides that a Type B corporation with a population of 20,000 or less, “project” also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation’s board of directors to promote new or expanded business development.” Further, the statute provides that a Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation’s authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings.

ATTACHMENTS:

- Performance Agreement
- Copy of Public Notice

RECOMMENDED MOTION OR ACTION:

Conduct the Public Hearing and take action on the Performance Agreement with Blue Pup Pub, LLC.

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** by and between **BLUE PUP PUB, LLC**, a Texas limited liability company (hereinafter referred to as “Developer”), and the **BARTONVILLE COMMUNITY DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “BCDC”), is made and executed on the following recitals, terms and conditions.

WHEREAS, BCDC is an economic development corporation operating pursuant to Chapter 505 of the Texas Local Government Code, as amended (also referred to as the “Act”), and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 505.158 of the Texas Local Government Code provides that “[f]or a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, “project” also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation’s board of directors to promote new or expanded business development.” Further, the statute provides that “[a] Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than \$10,000 until the governing body of the corporation’s authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings”; and

WHEREAS, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless BCDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by BCDC’s investment; a schedule of capital investments to be made as consideration for any direct incentives provided by BCDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, the Developer plans to spend approximately \$190,000 for exterior improvements and approximately \$150,000 in interior improvements to the Property and building generally located at 96 McMakin, Town of Bartonville, Texas;

WHEREAS, the Developer has now applied to the BCDC for financial assistance for façade and exterior improvements to be made to the Property generally located at 96 McMakin, Town of Bartonville, Texas; and

WHEREAS, the BCDC’s Board of Directors have determined the financial assistance provided to Developer for the Qualified Expenditures to be made to the Property is consistent with and meets the definition of “project” as that term is defined in Section 505.158 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code; and

WHEREAS, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the Town Council of the Town of Bartonville, Texas, to approve

all programs and expenditures of the BCDC, and accordingly this Agreement is not effective until Town Council has approved this project at a Town Council meeting called and held for that purpose.

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 BCDC and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, as defined herein, and shall continue thereafter until **September 30, 2021**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

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

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **BCDC.** The word “BCDC” means the Bartonville Community Development Corporation, a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 1941 East Jeter Road, Bartonville, Texas 76226.
- (d) **Developer.** The word “Developer” means Blue Pup Pub, LLC, a Texas limited liability company, its successors and assigns, whose address for the purposes of this Agreement is 96 McMakin Road, Bartonville, Texas 76226.
- (e) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the Developer and the BCDC.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”

- (g) **Full-Time Equivalent Employment Positions.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work averaged over a twelve (12) month period.
- (h) **Property.** The word “Property” means Lot 1, Block 1 of the Bartonville Store Addition, an addition to the Town of Bartonville, Denton County, Texas, and generally located at 96 McMakin Road, Bartonville, Texas 76226, Denton CAD Property ID # 692393.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures as depicted in *Exhibit A* of this Agreement, which is attached hereto and is incorporated herein for all purposes, and those expenses which otherwise meet the definition of “project” as that term is defined by Section 505.158 of the Act, and the definition of “cost” as that term is defined by Section 501.152 of the Act.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.
- (k) **Town.** The word “Town” means the Town of Bartonville, Texas, a Texas general-law municipality.

SECTION 4. AFFIRMATIVE COVENANTS.

Developer covenants and agrees with BCDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Qualified Expenditures.** Developer covenants and agrees to submit to the BCDC invoices, receipts, or other documentation in a form acceptable to the BCDC for the Qualified Expenditures made to the Property in a minimum amount of **One Hundred Thirty-Three Thousand Five Hundred No/100 Dollars (\$133,500.00)** by **April 30, 2019**. Developer covenants and agrees said construction of the Qualified Expenditures shall comply with all federal, state and local statutes, rules, regulations, and ordinances.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained by **April 30, 2019**, a Certificate of Occupancy from the Town of Bartonville, Texas, for a restaurant and retail business located on the Property.
- (c) **Operate Restaurant and Retail Business.** Developer covenants and agrees by **April 30, 2019**, and during the Term of this Agreement to keep open to the general public the Bartonville Store Restaurant and Retail business located on the Property.
- (d) **Job Creation and Retention.** Developer covenants and agrees by **June 1, 2019**, and during the Term of this Agreement to employ and maintain an approximately five (5) Full-

Time Equivalent Employment Positions and five to ten (5-10) part-time positions working at the Property. Developer covenants and agrees beginning on **September 1, 2019**, and during the Term of this Agreement, Developer shall deliver to BCDC a quarterly compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions and part-time positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions and part-time positions (the "Quarterly Compliance Verification"). The Developer covenants and agrees beginning on **September 1, 2019**, and quarterly thereafter during the Term of this Agreement, there will be a total of seventeen (17) Quarterly Compliance Verifications due and submitted to the BCDC covering the Full-Time Equivalent Employment Positions and part-time positions created and maintained during the Term of this Agreement. All Quarterly Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

- (e) **Performance Conditions.** Developer agrees to make, execute and deliver to BCDC such other instruments, documents and other agreements as BCDC or its attorneys may reasonably request to evidence this Agreement.
- (f) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and BCDC.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE BCDC.

BCDC covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Financial Assistance for Qualified Expenditures.** BCDC covenants and agrees to submit reimbursement for Qualified Expenditures made by the Developer pursuant to Section 4(a) of this Agreement, in an amount not to exceed the lesser of **Sixty-Six Thousand Seven Hundred Fifty and No/100 Dollars (\$66,750.00)** or fifty percent (50%) of the aggregate amount of said invoices, receipts, or other documentation submitted by the Developer to BCDC within thirty (30) days of receipt of said documentation.
- (b) **Performance.** BCDC covenants and agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the BCDC and Developer.

SECTION 6. CESSATION OF ADVANCES.

If BCDC has made any commitment to provide any financial assistance to Developer, whether under this Agreement or under any other agreement, the BCDC shall have no obligation to advance or disburse financial assistance if: (i) Developer becomes insolvent, files a petition in

bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or BCDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or BCDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and BCDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the BCDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment 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 is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from BCDC and/or Denton County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, 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 as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by BCDC to Developer pursuant to Section 5 of this Agreement shall become immediately due and payable by Developer to BCDC as follows:

- (a) Event of Default occurs from the Effective Date through **September 30, 2019**, repay **Forty-Four Thousand Five Hundred and No/100 Dollars (\$44,500.00)**;
- (b) Event of Default occurs from **October 1, 2019**, to **September 30, 2020**, repay and **Twenty-Two Thousand Two Hundred Fifty and No/100 Dollars (\$22,250.00)**.

SECTION 9. INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

SECTION 10. 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 the party or parties sought to be charged or bound by the alteration or amendment.
- (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 Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. BCDC 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.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **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.

- (g) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (h) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (i) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the “Notice”) is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested. The parties agree to keep the other party or parties informed of their address at all times during the Term of this Agreement. The Notices shall be addressed as follows:
- | | |
|------------------|---|
| if to Developer: | Blue Pup Pub, LLC
240 McMakin Road
Double Oak, Texas 75077
Attn: Tim House
Telephone: (214) 773-7441 |
| if to BCDC: | Bartonville Community Development Corporation
1941 East Jeter Road
Bartonville, Texas 76226
Attn: Tammy Dixon
Telephone: (817) 693-5280 |
- (j) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (k) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

- (1) **Undocumented Workers.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6.0%), not later than the 120th day after the date the BCDC notifies Developer of the violation.

[The Remainder of this Page Intentionally Left Blank]

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

BCDC:

BARTONVILLE COMMUNITY DEVELOPMENT CORPORATION,
a Texas non-profit corporation

By: _____
Jim Langford, Chair
Date Signed: _____

DEVELOPER:

BLUE PUP PUB, LLC,
a Texas limited liability company

By: _____
Tim House, Manager
Date Signed: _____

Exhibit A

[Qualified Expenditures]

Exterior Improvements/Additions	Estimated Cost
Remove gas canopy, gas island, retaining wall	7,200.00
Repair north part front canopy	2,400.00
Addition of rain gutters and downspouts	3,000.00
Exterior paint and siding repair	5,000.00
Replace and/or repair exterior doors	1,700.00
Landscaping	3,000.00
Signage (Replace existing façade sign/repair monument sign)	2,400.00
Parking area improvements	27,500.00
Front covered patio addition	28,500.00
Rear covered screened in patio addition	52,800.00
Estimated Expenses	133,500.00

DENTON RECORD-CHRONICLE
P.O. BOX 369
DENTON TX 76202
(940)566-6800

ORDER CONFIRMATION (CONTINUED)

Salesperson: Kaycee Key

Printed at 11/02/18 12:40 by kkey-dm

Acct #: 232

Ad #: 8220

Status: New

Notice of Public Hearing

**Bartonville Community
Development Corporation**

In accordance with the Development Corporation Act, Section 505.159(a) of the Texas Local Government Code, a public hearing will be held by the Bartonville Community Development Corporation, a Type B economic development corporation, on Tuesday, November 6, 2018, at 6:30 P.M. in the Bartonville Town Hall located at 1941 E. Jeter Road, Bartonville, Texas, to consider and take action upon the following project: to provide financial assistance in an amount not to exceed \$66,750.00 for the Blue Pup Pub, LLC, Restaurant improvements. It is requested that you make your views known, either in person or by writing to the Bartonville Community Development Corporation.

drc 11/4/2018