

PERFORMANCE AGREEMENT

This Performance Agreement (the “Agreement”) is made effective as of _____, 2014, (the “**Effective Date**”) by and between Bryan Commerce and Development, Inc. (the “**BCD**”), a Texas Local Government Corporation created under Texas Transportation Code Chapter 431 Subchapter D, and AdventGX, Inc. a Texas Corporation (“**Developer**”).

RECITALS

WHEREAS, in 2011, BCD acquired six parcels of land located in the north end of the downtown area of Bryan, constituting six adjacent city blocks, for the purposes of redevelopment;

WHEREAS, BCD has determined that it is in the best interest of BCD and the City of Bryan, Texas, a home-rule municipal corporation (the “**City**”), to facilitate the redevelopment of the downtown north area of Bryan (the “**Area**”) and to develop restaurant, retail, office, research, innovation and event space uses in the Area;

WHEREAS, in connection with the same, BCD desires to transfer and convey to Developer the property described as: CITY OF BRYAN TOWNSITE, BLOCK 267, LOTS 1-5, Bryan, Brazos County, Texas, and that is more particularly described on **Appendix “A”** attached hereto and incorporated herein for all purposes (the “**Property**”);

WHEREAS, located on the Property is a historic commercial building (the “**Ice House**”);

WHEREAS, the City and BCD believe the redevelopment of the Ice House will serve as a catalyst for the redevelopment of the remaining city blocks owned by BCD in the Area and further economic development in the City;

WHEREAS, in furtherance of BCD’s redevelopment goals for the Property, BCD issued a Request for Proposals (RFP) for the Ice House, and Developer’s proposal was selected based on the criteria identified in the RFP.

WHEREAS, subject to the following terms and conditions, and in consideration of the promises set forth herein, the parties desire that BCD convey the Property to the Developer for no monetary consideration, and the Developer invest, directly or via its designated tenants, a minimum of 2.5 million dollars in the Renovation of the Ice House and the construction of other improvements upon the Property, including renovation of the exterior of the historic building in keeping with its original mission revival architecture style and the approved Building Stabilization Plan (the “**Improvements**”), and Developer shall devote a minimum of 25% of the square footage of the Ice House to restaurant and retail use, and a portion of the Ice House shall be dedicated to Innovation Space (the “**Intended Use**”); and,

WHEREAS, BCD has determined that the Improvements and Intended Use will promote and encourage economic development in the Area and provide certain economic benefit to the City including, without limitation, the proceeds received by the City from the ad valorem taxes levied upon the premises and equipment.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

I. Definitions.

1.1 As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

A. “Bankruptcy” or “Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any party of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

B. “BCD” shall mean Bryan Commerce and Development, Inc., a Texas Local Government Corporation, created by the City under the authority of the Texas Transportation Code, Chapter 431 Subchapter D.

C. “Building Stabilization Plan” shall mean the plans and drawings prepared by a licensed engineer to accomplish building stabilization and renovation of the Ice House, including, but not limited to interior structural and building system improvements, foundation, roof repair and/or replacement, hardscape such as driveways and sidewalks, and other building stabilization improvements.

D. “City” shall mean the City of Bryan, Texas, a home-rule municipal corporation of the State of Texas.

E. “Certificate of Occupancy” shall mean a Certificate of Occupancy permitting the lawful occupancy of the applicable improvements from the appropriate Governmental Authority having jurisdiction over the applicable portion of the Property.

F. “City Council” shall mean the elected city council of Bryan, Texas.

G. “Code” shall mean the Bryan City Code of Ordinances as of the Effective Date and as amended from time to time.

H. “Completion Date” shall mean the date as of which the Improvements have been completed and a final certificate of occupancy obtained for the entire Ice House Building.

I. “Completion Deadline” The contract requirement that the Completion Date shall occur within 24 months of conveyance of the Property.

J. “Effective Date” shall mean the date contained in the first paragraph of this Agreement.

K. “Act of Default” shall mean any happening or occurrence described in Section VII hereof following notice and the expiration of a 30-day cure period.

L. “HLC” shall mean the City of Bryan’s Historical Landmark Commission.

M. "Ice House" shall mean the historic commercial building located on the Property that is the subject of this Performance Agreement.

N. "Improvements" shall mean improvements to the exterior of the Ice House in keeping with its original mission revival architecture style and other improvements required to be constructed in accordance with the approved Building Stabilization Plan

O. "Innovation Space" shall mean area designated for the creation and development of new products, technologies, services and methods in the areas of Science, Engineering, Arts and Design.

P. "Intended Use" shall mean the requirement that a minimum of 25% of the square footage of the Ice House shall be devoted to restaurant and retail use, and a portion of the Ice House shall be dedicated to Innovation Space

Q. "Payback Provisions" shall mean Developer's payment obligations as described in Section 8.1 herein.

R. "Permitted Encumbrances and Reservations" as used herein shall mean municipal and zoning ordinances, recorded easements for public utilities serving the Property, and such other matters contained in the public records in advance of the date of this Agreement not objected to by Developer.

S. "Project" shall mean the Renovation of the Ice House.

T. "Property" shall mean the property located in the City Bryan, County of Brazos, State of Texas, to wit: CITY OF BRYAN TOWNSITE, BLOCK 267, LOTS 1-5, Bryan, Brazos County, Texas, as more fully described in **Appendix "A"**, attached hereto.

U. "Related Agreement" shall mean any other agreement by and between BCD and the Developer, or any of its affiliated or related entities, relating to the Project.

V. "Renovation" means the construction of Improvements to the Property in a minimum amount of 2.5 million dollars.

W. "Surface Estate" shall mean all rights and title to the Property except the rights to water and minerals.

II. Conveyance of Real Property

In consideration for Developer's agreement to satisfy the requirements set out in Section III, below, BCD hereby agrees as follows:

2.1 BCD shall convey to Developer by Special Warranty Deed, title to the Surface Estate, subject to Permitted Encumbrances and Reservations, being CITY OF BRYAN TOWNSITE, BLOCK 267, LOTS 1-5, Bryan, Brazos County, Texas (the "Property"). The Surface Estate shall be all rights and title to the Property except the rights to water and oil, gas and other minerals. BCD will retain any and all water rights and owned oil, gas and other minerals interests, if any, in, on or under the PROPERTY. BCD agrees to waive the rights to use the surface of the PROPERTY to a depth of two hundred fifty feet (250')

for any oil, gas or mineral drilling or exploration, subject only to existing drilling rights and surface rights held by current oil and gas lessees, if any, and which are not waived or released by such lessees. BCD shall expressly reserve unto itself, its successors and assigns, all subsurface easements as may be necessary for directional drilling or horizontal drain holes for the purpose of producing the oil, gas or other minerals to be re served.

2.2 The Property will be conveyed "as is, without warranty", except that BCD will warrant title by Special Warranty Deed to the Property, subject only to the Permitted Encumbrances and Reservations. The conveyance shall be by Special Warranty Deed, in substantially the same form as Exhibit "B", and closing shall occur within 60 calendar days from the execution of this Agreement, at which time and date as BCD and Developer may agree upon (the "Closing Date"), unless the Agreement is terminated under the provisions of Section 2.5.

2.3 BCD agrees to deliver to Developer, within ten (10) days of the date of this Agreement, copies of surveys, title reports and policies, of any kind or nature relating to the Property that BCD currently has in its possession.

2.4 The general real estate taxes for the year that BCD conveys the Property to Developer shall be prorated as of the closing date, based on the current year tax rate times the most recent assessed value for the Property (or as reasonably allocated to the Property, if part of a larger tax parcel), with BCD being responsible for the day of the conveyance. If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation. The general real estate taxes for all years prior to the year of conveyance shall be the responsibility of BCD and shall be paid by BCD on or before the date of the conveyance. Any unpaid special assessments or installments thereof affecting the Property (including those levied and/or assessed on or before the date of the conveyance), shall be the responsibility of BCD and shall be paid by BCD on or before the date of the conveyance.

2.5 Developer's obligations under this Agreement and the acquisition of the Property shall be expressly conditioned upon the following provisions:

A. Right to Terminate Agreement During Due Diligence Period. In order for Developer to exercise Developer's right to terminate this Agreement pursuant to any of the following conditions, Developer must provide BCD with written notification of Developer's intent to terminate this Agreement during the period commencing on the Effective Date of this Agreement and continuing for a period of 90 calendar days (the "Due Diligence Period"). If Developer delivers a timely written notice to BCD pursuant to any of the conditions outlined below in Section 2.8 below, Developer's obligations under this Agreement shall terminate.

(i) Environmental Report. BCD has provided to Developer a Level I environmental site assessment report dated April 14, 2014. During the Due Diligence Period, Developer shall have the right to order, at its own expense, an additional Level I Environmental Site Assessment or a Phase II investigation (if necessary as a result of matters disclosed in the Phase I environmental site assessment). If the environmental report or any subsequent investigations disclose a recognized environmental condition which Developer is unwilling to accept or if Developer determines, in its reasonable discretion, that there are unacceptable amounts of any hazardous substances located on,

in, or under the Property, then Developer may provide BCD written notification of its intent to terminate within the Due Diligence Period or this contingency shall be deemed waived.

(ii) Inspection for Construction. BCD has provided to Developer a preliminary structural report prepared by a licensed Structural Engineer dated April 14, 2014. During the Due Diligence period, Developer or Developer's contractor, engineer, or any other professional of Developer's choosing may at Developer's expense conduct inspections of the Property to determine the feasibility and cost of construction for the Intended Use. If the inspections disclose matters which are likely to substantially increase the cost of construction, then Developer may provide BCD written notification of its intent to terminate within the Due Diligence Period or this contingency shall be deemed waived.

(iii) Survey. BCD will provide, at BCD's cost no later than five (5) business days before the expiration of the Due Diligence Period, a survey of the Property, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of way and other encumbrances of record (the "Survey"). In the event that Developer notifies BCD of an objection to the Survey, BCD shall be granted a reasonable period, not exceeding fifteen (15) days, in which to remove Developer's objections. If BCD is unable, after using reasonable diligence, to remove Developer's objections within such fifteen (15) day period, then Developer may provide BCD written notification of its intent to terminate within ten (10) days thereafter or this contingency shall be deemed waived.

The Survey drawing shall be addressed to and certified in favor of the Developer and the Title Company. The field notes description, as prepared by the surveyor, shall be used in the Special Warranty Deed.

(iv) Title Commitment. BCD shall furnish to Developer, no later than five (5) business days before the expiration of the Due Diligence Period, at Developer's expense, a Commitment for Title Insurance ("**Title Commitment**") from University Title ("**Title Company**"). The foregoing Title Commitment shall also show title to the Property to be free and clear of all encumbrances excepting only Permitted Encumbrances and Reservations and any liens of record in respect of existing indebtedness, which shall be paid by BCD and the related liens released on or before the date of conveyance. BCD agrees to provide the Title Company with all documentation necessary to delete and remove all standard title exceptions from the owner's policy of title insurance. If Developer does not notify BCD of its objection to any item disclosed in the historic title work or abstract and/or in the Title Commitment within the Due Diligence Period, this contingency shall be deemed waived. In the event that Developer notifies BCD of an objection to the status of title to the Property as disclosed by the historic title work or abstract and/or in the Title Commitment, BCD shall be granted a reasonable period, not exceeding fifteen (15) days, in which to remove Developer's objections. If BCD is unable, after using reasonable diligence, to remove Developer's objections within such fifteen (15) day period, Developer may provide BCD written notification of its intent to terminate this Agreement within ten (10) days or this contingency shall be deemed waived.

B. BCD hereby grants Developer and Developer's contractors with the right to enter the Property to perform the investigations and studies described in any of the subsections A (i) – (iv) of Section 2.5, including the right to perform physical investigation and soil borings on the Property, and Developer agrees to repair the land affected after the borings and after Developer's inspection is complete.

C. Financing. As a condition precedent to conveyance of the Property, Developer shall furnish to BCD an unconditional loan commitment from a lender (or lenders) of Developer's choosing for a construction loan to finance the construction of the Project in a minimum amount of Two Million Dollars (\$2,000,000.00) or other evidence of commitment satisfactory to BCD. If Developer is not able to furnish to BCD a commitment for the financing as described above before the expiration of the Due Diligence Period, the Agreement shall terminate.

D. Approved Building Stabilization Plan. As a condition precedent to conveyance of the Property, Developer shall submit to the City a Building Stabilization Plan for the Ice House prepared by a licensed Structural Engineer and obtain approvals of the Plan by the City of Bryan's Historic Landmark Commission (the "HLC") and the City of Bryan's Site Development Review Committee (the "SDRC") before the expiration of the Due Diligence Period, If the Developer is not able to obtain the approval of the HLC and SDRC of the proposed Stabilization Implementation Plan prior to the expiration of the Due Diligence Period, the Agreement shall terminate.

E. The Benefit. The value of the Property at the time of conveyance from the BCD to Developer is stipulated to be \$300,000.00. (the "**Benefit**"). It is acknowledged and agreed that, except for the Payback Provisions, no purchase price shall be required to be paid for the Property and the Property will be conveyed to Developer for no monetary consideration. BCD will pay any transfer or deed taxes applicable to the conveyance of the Property to Developer.

F. No Transfer. The parties agree that the Property shall not be subdivided or sold, transferred or conveyed to any third party during the Term of this Agreement, without the prior written consent of BCD.

III. Developer's Performance Obligations.

3.1 Upon the conveyance of the Property to Developer, Developer agrees to:

- (i) invest a minimum of TWO MILLION, FIVE HUNDRED THOUSAND UNITED STATES DOLLARS (\$2,500,000.00) in the Renovation to the Ice House (hereinafter the "Minimum Investment Requirement");
- (ii) occupy the Ice House with a minimum of 25% of the square footage devoted to restaurant and retail uses, and a portion of the Ice House dedicated to Innovation Space;
- (iii) obtain approval from the HLC prior to undertaking any building exterior modifications (other than items that would be considered maintenance);
- (iv) Complete all Renovations and obtain a Certificate Of Occupancy for the entire Ice House building within 24 months after conveyance of the Property; and
- (v) Upon completion of Improvements, required by this Agreement, the Ice House

shall comply with all applicable City Codes and Regulations.

IV. Developer's Performance Schedule

4.1. Developer further agrees to comply with the following progress milestones and performance schedule:

- (i) Within 30 days of execution of this Agreement, develop a building stabilization plan prepared by a licensed engineer.
- (ii) Within 90 days of execution of this Agreement, submit to the City a detailed plan for implementation of the building stabilization plan (the "Plan") and a timeline; and obtain initial approvals of the Plan from the HLC and the SDRC.
- (iii) Within 30 days of HLC approval, begin implementation of the Plan (Phase I).
- (iv) Within 24 months after conveyance of the Property, complete all Renovations and obtain a certificate of occupancy for the entire Ice House building.

V. Developer's Failure to Achieve Progress Milestones

5.1 Failure to Achieve Progress Milestones. The failure of Developer to achieve any progress milestone by the deadline set forth in Section 4.1 shall be deemed a default of this Agreement and the Agreement may be terminated by BCD, subject to the provisions of Sections 5.2 and 5.3.

5.2 Extension. If Developer is rendered wholly or partly unable to meet any Progress Milestone by the deadline set forth in Section 2.5 because of an event of Force Majeure, Developer's time to meet such Progress Milestone date shall be extended to the extent such delay impacted its ability to maintain its schedule by the actual number of calendar days Developer was delayed to meet any such Progress Milestone Date as a direct and proximate result of such event of Force Majeure.

5.3 Notice of Event of Delay Required. As a condition precedent to Developer's entitlement to an appropriate extension of time to complete the Progress Milestones, Developer shall deliver to BCD written notice, describing in reasonable detail the event of delay, its cause, when and how Developer obtained knowledge of the event and of the actual or anticipated delay caused thereby and the date the event commenced or occurred, not later than 15 calendar days after the date Developer obtains both (a) knowledge or reasonable cause to believe that such event has commenced or occurred and (b) knowledge or reasonable cause to believe that the event either has resulted in or may result in delay in achieving a Progress Milestone. Developer shall use commercially reasonable efforts to remedy any inability to perform and minimize the impact of any delay.

VI. Covenants and Duties

6.1 BCD's Covenants and Duties.

A. Grant of Real Property. BCD is obligated to transfer and convey the Property to Developer in accordance with the terms of this Agreement.

B. Developer's Covenants and Duties. Developer makes the covenants and warranties to the City and agrees to timely and fully perform the obligations and duties contained in this Agreement. Any false or substantially misleading statements contained herein or failure to timely

and fully perform those obligations and duties within this Agreement shall be an Act of Default by the Developer. Developer further covenants and warranties to the City the following:

- (i) Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
- (ii) The execution of this Agreement has been duly authorized by Developer's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of Developer's by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.
- (iii) Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and Developer has not been informed of any potential involuntary bankruptcy proceedings.
- (iv) Developer shall timely and fully comply with all of the terms and conditions of this Agreement.
- (v) Developer agrees to complete, or cause to be completed, the improvements to the Ice House at its sole cost and expense, save and except for any Chapter 380 Downtown Façade Grant Agreement between the City and Developer.
- (vi) Developer agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the improvements to the Ice House.
- (vii) Developer agrees to supervise the construction of the Project and cause the construction to be performed substantially in accordance with federal, state and local laws and ordinances and this Agreement.

VII. Substantial Compliance and Acts of Default

7.1 Failure by either Party to timely and substantially comply with any performance obligation, requirement, duty, or covenant shall be considered an Act of Default (subject to force majeure), if uncured within thirty (30) days of receiving written notice from the other Party. Failure of Developer to timely and substantially cure a default will give the BCD the right to terminate this Agreement, as reasonably determined by the BCD.

VIII. Penalty

8.1 Payback Provisions. In the event Developer defaults on any Developer performance obligations, covenants or the performance schedule under this Agreement (subject to force majeure), and such default is not cured within 90 days of written notice thereof, then, in any such event, Developer shall immediately pay to BCD the amount of the Benefit, which is THREE HUNDRED THOUSAND UNITED STATES DOLLARS (\$300,000.00).

IX. Term of This Agreement

9.1 The Term of this Agreement shall commence on the Effective Date and shall continue for a period of 24 months, unless earlier terminated in connection with Developer's failure to comply with the requirements of this Agreement. The Developer's payment obligations under the payback provisions of Section 8.1 of this Agreement shall survive the expiration of the Term.

X. Force Majeure

10.1 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, or other circumstances which are reasonably beyond the control or knowledge of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, 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 requirement shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that Developer's failure to obtain adequate financing to complete the Project shall not be deemed to be an event of force majeure and this Section shall not operate to extend the Completion Date in such an event.

XI. Indemnity

11.1 DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY OF BRYAN, THE BCD, THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: (1) ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS ERRONEOUSLY ENTERED INTO THIS AGREEMENT AND OR ERRONEOUSLY MADE A GRANT UNDER TEXAS TRANSPORTATION CODE CHAPTER 431 SUBCHAPTER D, OR (2) RESULTING FROM DEVELOPER'S ACTIVITIES ON THE PROPERTY IN PERFORMANCE OF ITS INSPECTIONS OR TESTS CONDUCTED ON THE PROPERTY; OR (3) AS A RESULT OF ANY CLAIM OF ANY KIND, MADE BY ANY PARTY WHO IS NOT A PARTY OF THIS AGREEMENT, WHEN THE BASIS OF SUCH CLAIM, IN WHOLE OR PART IS AN ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY DEVELOPER UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED UNDER SUBPART (2) HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE ACTION OR OMISSIONS OF THE CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

XII. Miscellaneous

12.1 Authority. Each party hereby represents and warrants to each other party that this Agreement is within its authority and that such party has been duly authorized and empowered to enter into this Agreement. Developer acknowledges that this Agreement may be terminated and the conveyance withheld if Developer's certification pursuant to this section is inaccurate.

12.2 Representations and Warranties by Developer. Developer warrants, represents, covenants, and

agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of such party has been duly authorized to act for and bind such party. DEVELOPER acknowledges that the agreement may be terminated and the conveyance withheld if this certification is inaccurate.

12.3 Franchise Tax Certification. As a corporate, or limited liability company, DEVELOPER certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation, or limited liability company, is exempt from the payment of such taxes, or that the corporation, or limited liability company, is an out-of-state corporation, or limited liability company, that is not subject to the Texas Franchise Tax, whichever is applicable. Developer acknowledges that this Agreement may be terminated and the conveyance may be withheld if Developer's certifications pursuant to this section are inaccurate.

12.4 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Developer shall not assign this Agreement without the written approval of the City Council. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section. If Developer assigns this Agreement without written approval of the City Council, this Agreement shall terminate immediately and the partial abatement of taxes on personal Property and equipment provided for herein shall cease from the date such unauthorized assignment occurred.

12.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

12.6 Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue shall be in a court of appropriate jurisdiction in Brazos County, Texas.

12.7 Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

12.8 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership of joint venture among the parties.

12.9 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

12.10 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.11 No Waiver. City's failure to take action to enforce this Agreement in the event of Developer's

default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.

12.12 Notices. City and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

BCD

Kean Register, City Manager
P.O. Box 1000
Bryan, TX 77803

DEVELOPER

Jose Quintana, President of AdventGX
216 W. 26th Street
Bryan, Texas 77805-1000

12.13 Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

12.14 Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

12.15 Duplicate Originals. The parties hereto have executed this Agreement in duplicate originals, each of equal dignity. Each party has stated the execution date below the signature of its authorized representative. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

EXECUTED THIS THE ____ DAY OF _____, 20__.

ATTEST:

Bryan Commerce and Development, Inc.

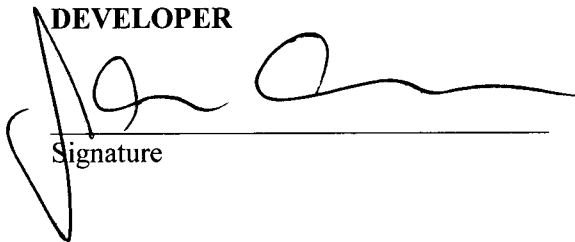
Mary Lynne Stratta, City Secretary

Jason P. Bienski, President

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

DEVELOPER



Signature

Jose Quintana, President of AdventGX Corporation

APPENDIX "A"

DESCRIPTION OF THE PROPERTY

Being a 0.7518-acre tract or parcel of land lying and being a part of the Bryan Original Townsite according to the plat recorded in Volume H, Page 721, Deed Records, Brazos County, Texas and also being a part of Block 267 as shown on a drawing attached to the Minutes of the Regular Meeting of the Bryan City Council of January 8, 1909, and said minutes being attached to an Affidavit by Lonnie Stabler, Mayor of the City of Bryan, filed for record in Volume 3858, Page 130, Official Records, Brazos County, Texas, and said 0.7518-acre tract more particularly described as follows:

BEGINNING at an iron railroad spike found on the northern right-of-way line of West Martin Luther King Street, an 80'-wide public right of way, also known as Jackson Street and 19th Street, said iron spike marking the southernmost corner of a called 0.68-acre tract of land conveyed to Dr. Wade Farrow by Fred A. Forgey by deed recorded in Volume 8248, Page 6, Official Records, Brazos County, Texas;

THENCE N 08°30'00" E, through said Block 267 and along the eastern boundary line of said 0.68-acre Farrow tract, for a distance of 250.00' to a point located 0.28' -- S 08°30'00" W from a capped iron rod found, said point being located on the southern boundary line of a called 3.48-acre tract of land conveyed to Heame Cotton Compress Co., Inc. by Bryan Compress and Warehouse Company by deed recorded in Volume 267, Page 275, Deed Records, Brazos County, Texas, and said 3.48-acre tract being currently owned by Bryan Cotton Warehouse, Inc.;

THENCE S 81°30'00" E, along the northern boundary line of said Block 267 and the southern boundary line of said Bryan Cotton Warehouse, Inc. tract, for a distance of 131.00' to a point located 0.50' -- S 15°11'59" E from a bent ½" iron rod found, said point being located on the western boundary line of a City of Bryan public right-of-way;

THENCE S 08°30'00" W, along said right-of-way line, for a distance of 250.00' to a ½" iron rod set, said rod being located on the northern right-of-way line of said West Martin Luther King Street;

THENCE N 81°30'00" W, along said West Martin Luther King right-of-way line, for a distance of 131.00' to the **POINT OF BEGINNING**, containing **0.7518 acre** of land more or less

Note: Bearing source is the Replat of Part of Lot 35, Bryan Original Townsite, recorded in Volume 3752, Page 35, Official Records, Brazos County, Texas.

APPENDIX "B"
WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: _____, 20__

Grantor: Bryan Commerce and Development, Inc.

Grantor's Mailing Address: 300 South Texas Avenue
Bryan, Texas 77803

Grantee: AdventGX Corporation

Grantee's Mailing Address: 1700 Research Parkway, Ste. 165
College Station, Texas 77845

Consideration: Grantee's covenant to comply with the terms and conditions of that certain Performance Agreement, between the Parties and effective as of _____, 201__, and approved by Bryan Commerce and Development on _____, 201__, by Resolution No. _____; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property, (including any improvements):

An approximately 32,250 square foot tract of land situated in the City of Bryan, Brazos County, Texas and being more particularly described as Lots 1-5, Block 267, of the Bryan Original Townsite as shown on the plat of same filed in Volume H, Page 721 of the Property Records of Brazos County, Texas.

Reservations from and Exceptions to Conveyance and Warranty: Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from and existing by reason of; zoning ordinances and other ordinances, resolutions rules, or regulations, applicable to the Property, of the City of Bryan, Texas, or other federal, state or local governmental agency, and taxes for current year, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes. There is further reserved unto Grantor, its successors and assigns, any and all of the oil, gas, and other minerals, as well as subsurface water in and under and that may be produced from the herein described property,

provided however that there shall be no right of ingress or egress to the surface of the premises at any time for the purpose of mining, drilling, exploring, operating, or developing said property for oil, gas, other minerals, or subsurface water or removing same therefrom or for using the property for storage or transportation. Nothing herein shall prohibit pooling or permitting slant drilling under said premises to develop the rights reserved herein.

GRANTEE ACCEPTS THE PROPERTY "AS IS" AND "WHERE IS", WITH ALL FAULTS, AND, EXCEPT FOR THE WARRANTIES OF TITLE CONTAINED IN THIS DEED AND THE LIMITED EXPRESS WRITTEN REPRESENTATIONS CONTAINED IN THE SURVEYING LANGUAGE OF THE CONTRACT FOR SALE OF THE PROPERTY, IF ANY, NEITHER SELLER, NOR ANY OF THE SELLER'S EMPLOYEES OFFICERS, MEMBERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND/OR AGENTS (COLLECTIVELY THE "SELLER RELATED PARTIES") HAVE MADE OR GIVEN ANY WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND WHATSOEVER, REGARDING ANY MATTER RELATING TO THE PROPERTY WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED, MOREOVER, EXCEPT AS SET FORTH IN THE SURVEYING LANGUAGE OF THE CONTRACT FOR SALE OF THE PROPERTY AND THIS DEED, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AND THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING THE PRESENT OR FUTURE VALUE, PROFITABILITY, PERFORMANCE OR PRODUCTIVITY OF THE PROPERTY, THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE OR ANY OTHER USE, OR REGARDING THE PAST OR PRESENT COMPLIANCE BY SELLER WITH LAWS RELATED TO LAND USE, ENVIRONMENT MATTERS, POLLUTION, OR ANY LAWS PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING, TRANSPORTATION, OR DISPOSING, OR THE PRESENCE OR ABSENCE ON THE PROPERTY OF HAZARDOUS OR TOXIC WASTE OR SUBSTANCES AS SUCH TERMS ARE DEFINED IN FEDERAL, STATE AND LOCAL LAWS.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

Executed this ___ day of _____, 201__ by:

GRANTOR:
Bryan Commerce and Development, Inc.

By: _____
Jason P. Bienski, President

ATTEST

APPROVED AS TO FORM

Mary Lynne Stratta, City Secretary

Janis K. Hampton, City Attorney

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

THIS INSTRUMENT was acknowledged before me on the ___ day of _____, 201__ by Jason P. Bienski, President of the Board of Directors of Bryan Commerce and Development, Inc., a local government corporation, on behalf of said corporation.