

21-001939-CV-361

CAUSE NO. _____

BRYAN COMMERCE and DEVELOPMENT,
INC.,
Plaintiff

IN THE DISTRICT COURT

v.

BRAZOS COUNTY, TEXAS

ADVENTGX, INC.
Defendant

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Bryan Commerce and Development, Inc., Plaintiff, files this its Original Petition complaining of AdventGX, Inc., and for cause of action respectfully shows the Court as follows:

I.

DISCOVERY LEVEL

1. Discovery will be conducted under a Level 3 Discovery Control Plan pursuant to Texas Rule of Civil Procedure 190.4. Plaintiff will submit a proposed Level 3 Scheduling Order after having an opportunity to discuss the same with Defendant's counsel.

II.

TEXAS RULE OF CIVIL PROCEDURE 47 STATEMENT OF RELIEF SOUGHT

2. The Plaintiff seeks monetary relief over \$200,000.00, but not more than \$1,000,000.00. As such, the action is not subject to the expedited action rules.

III.

INTRODUCTION

3. This is a contractual dispute arising out of that certain Performance Agreement, dated July 10, 2014 by and between Bryan Commerce and Development, Inc. ("BCD") and AdventGX, Inc. ("AGX") (the "Agreement") (Exhibit "A"). BCD is a local government corporation created by the City of Bryan pursuant to the Texas Transportation Code to facilitate and advance economic

development in Bryan, Texas. The underlying purpose of the Agreement was to provide a mechanism for the continued development and revitalization of the Bryan downtown area.

4. BCD agreed to convey title to a tract of land in the north end of downtown Bryan, Texas to AGX at no cost. In consideration, AGX agreed to a timetable under which it would invest \$2.5 million for the repair and upgrade a long time vacant building known as the Ice House on the tract that was outdated and in disrepair. AGX also agreed that at least 25% of the square footage of the building would be used for retail/restaurant purposes by a specified date. In so doing, the downtown Bryan area revitalization would proceed with continued growth in the City's tax base.

5. AGX nonetheless failed to fulfill its obligations despite the Parties agreeing to two separate amendments extending the deadlines for completion of the renovation and construction. BCD therefore provided AGX with notice of default with an opportunity to cure on February 21, 2020. AGX failed to cure despite continued discussions and it has yet to perform as promised to this day despite a January 15, 2018 deadline. It is for that reason that BCD now brings this suit for breach of contract seeking the recovery of the \$300,000 as the agreed upon payment for the tract of land now held by AGX. BCD also seeks the recovery of attorney fees.

IV. **PARTIES, JURISDICTION AND VENUE**

6. Bryan Commerce and Development, Inc., Plaintiff, is a Texas Transportation Code local government corporation created by the City Council of the City of Bryan, Texas, and duly incorporated pursuant to the Constitution and laws of the State of Texas.

7. AdventGX, Inc., Defendant, is a for profit corporation incorporated and operating under the laws of the State of Texas. Defendant AdventGX may be personally served with process by and through its registered agent, Jose Quintana, 216 W. 26th Street, Bryan, Texas 77803 or anywhere else that he may be found.

8. Jurisdiction is proper in this Court because the amount in controversy is within the jurisdictional limits of this Court. The Court also has jurisdiction over the breach of contract claim.

9. Venue in this case is proper in Brazos County, Texas pursuant to the Parties' agreement set forth in Paragraph 12.6 of the Agreement. Venue is also proper pursuant to: (a) Section 15.020 of the Texas Civil Practice and Remedies Code in that the suit arises out of a major transaction in which the parties agreed that venue was proper in Brazos County, and (b) Section 15.002 of the Texas Civil Practice and Remedies Code because Brazos County is the county in which all or substantial part of the events or omissions giving rise to the claim occurred and because the Defendant's principal place of business is located in Brazos County.

V.
BACKGROUND OF DISPUTE

10. On July 10, 2014, BCD and AGX executed the Agreement for the sale of property addressed as 800 N. Main Street, Bryan, Texas (the "Ice House") at no cost, in exchange for AGX's promise to spend \$2,500,000.00 in improvements to the Ice House to be used for specific purposes within a 24 month period of the conveyance of title or December 17, 2016. (Exhibit "A"). It was further agreed that if the Ice House renovation was not completed according to the Agreement's terms, AGX would be obligated to pay BCD \$300,000.00 as compensation for the land. Finally, the parties established \$300,000.00 as the value of the land with the understanding that the payment would be made should AGX default in its obligations.

11. The Agreement was amended twice, once on December 8, 2014, and again on September 29, 2017. (Exhibits "B" and "C"). The First Amendment extended the deadlines for the renovation an additional 8 months to August 17, 2017 with provisions also being added to assist AGX to obtain the necessary financing. The Second Amendment once again extended the deadlines for completion with AGX being required to obtain the final certificate of occupancy (i.e. fully occupy

the Ice House, and provide proof of investment of \$2,500,000.00 in improvements) on or before January 15, 2018. AGX was also obligated to occupy/lease the Ice House with a minimum of twenty-five percent of the square footage dedicated to restaurant and/or retail uses and an additional being used as an “innovation space.”

12. Notwithstanding the terms of the Agreement and the subsequent amendments extending the time table, the Ice House remains unfinished with a certificate of occupancy not having been issued for approximately 2,280 square feet. AGX has also failed to dedicate twenty-five percent of the square footage as restaurant and/or retail space as agreed. Instead, only one restaurant tenant occupying fourteen percent of the total square footage is the sole retail establishment. AGX has also failed to invest the full \$2,500,000.00 into improvements of the Ice House as agreed.

13. BCD was forced to provide AGX with notice of default and opportunity to cure on February 21, 2020 following multiple attempts to informally persuade AGX to complete of the Ice House renovation. BCD also notified AGX that if the default was left uncured for over ninety days, that AGX would be obligated to make the \$300,000.00 payment for the cost of the land. (Exhibit “D”). AGX failed to cure and instead provided multiple excuses, none of which were dispositive. As a consequence, BCD presented a second notice of default with a demand for the \$300,000.00 payment on October 6, 2020. (Exhibit “E”). The payment was not forthcoming and the project remains incomplete. As such, BCD has no choice but to bring this suit.

VI. CAUSES OF ACTION

14. Paragraphs 1 through 13 are incorporated herein by reference as if fully set out below and serve as the basis for the Plaintiff’s claim for breach of contract. The Plaintiff also seeks the recovery of attorney fees and court costs.

A. Breach of Contract and Satisfaction of Conditions Precedent:

15. The Agreement was a valid and enforceable contract that existed between the Parties. BCD is a proper party to bring suit for breach of the Agreement. BCD performed, tendered performance of or was excused from performing its contractual obligations.

16. AGX breached the Agreement by failing to meet the construction and development requirements by the agreed upon deadlines: (a) AGX had not fully occupied the building; (b) AGX had not invested \$2,500,00.00 in improvements, and (c) AGX has failed to fulfill the agreement to dedicate 25% of the square footage to restaurant/retail uses.

17. AGX's breach has caused BCD damages in the amount of \$300,000 for which BCD now brings suit pursuant to Section 9.1 of the Agreement. BCD has fulfilled all conditions precedent to its right to bring this suit and to recover the damages being sought.

B. Attorney Fees:

18. It was necessary for Plaintiff to retain an attorney to represent its interests in this suit. Plaintiff is entitled to recover reasonable and necessary attorney fees through all stages of appeal pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code.

VII.

TEXAS RULE OF CIVIL PROCEDURE 194 REQUIRED DISCLOSURES

19. The Plaintiff is directed toward its obligations to make the Required Disclosures under Texas Rule of Civil Procedure 194 within 30 days from the filing of this Original Answer.

VIII.

TEXAS RULE OF CIVIL PROCEDURE 193.7 NOTICE

20. The Plaintiff hereby places the Defendant on notice that it intends to use documents produced in response to written discovery requests and obtained from third parties by way of

subpoena duces tecum in both trial and pretrial hearings. All such documents will be considered to have been authenticated pursuant to Texas Rule of Civil Procedure 193.7.

IX.

TEXAS RULE OF EVIDENCE 609(F) REQUEST

21. The Plaintiff requests that the Defendant comply with Texas Rule of Evidence 609(f) by providing sufficient written notice identifying any witness or testifying expert for which you intend to use evidence of a conviction.

X.

PRESERVATION OF EVIDENCE

22. The Plaintiff hereby requests and demands that the Defendant preserves and maintains all evidence pertaining to any claim or defense related to the transactions made the basis of this lawsuit, or damages resulting therefrom, including, records of telephone calls, records of discussions with the Plaintiff regarding the Agreement or the Amendments thereto, the Defendant's development and construction of the Ice House tract, development costs, construction costs, accountings of all expenses and costs of development, financing, tenant leases obtained or considered, governmental permitting, including, but not limited to construction permits and inspections, and certificate of occupancy, statements, photographs, videotapes, surveillance tapes, audiotapes, recordings of any kind, business records, audits, regulatory records or communications, bills, estimates, invoices, checks, correspondence, investigative reports, policies, protocols, personal information, memoranda, facsimile, **electronic mail messages, cellular textual messages or telephone records, voice mail messages or recordings, and any electronic image or information related to the referenced transactions or any damages resulting therefrom.** This request applies and extends to the Defendant as well as any and all of its employees, representatives, agents, attorneys, officers, directors, shareholders, parent or affiliated entities, or anyone else acting for or on behalf of the Defendant. The Defendant's failure to comply with this

request and to maintain any and all of such evidence, documents, or information may constitute “spoliation” of evidence.

XI.
PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests that the Defendant be cited to appear and answer, and that on final trial the Plaintiff be awarded:

- a. Actual damages, both direct and consequential;
- b. Reasonable and necessary attorney fees through judgment and subsequent appeal through the Texas Supreme Court;
- c. Costs of court; and
- d. All other and further relief to which the Plaintiff may show itself to be justly entitled.

Respectfully submitted,

THE RIFE LAW FIRM

By: /s/ Wayne T. Rife
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State Bar No. 16915850
Aaron T. Hubbard
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ATTORNEYS FOR PLAINTIFF

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made effective as of July 10, 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 reserved.

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 (Phase1).

(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.

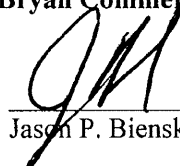
12.15 Duplicate Originals. The parties hereto have executed this Agreement in duplicate originals, each of equal dignity. Each party has stated the execution date below the signature of its authorized representative. If the parties sign this Agreement on different dates, the later date shall be the effective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

EXECUTED THIS THE 10 DAY OF July, 2014.

ATTEST:

Bryan Commerce and Development, Inc.

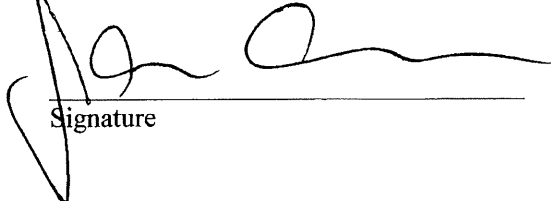

Mary Lynne Stratta, City Secretary


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 3856, 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"

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.

**FIRST AMENDMENT TO PERFORMANCE AGREEMENT
BETWEEN ADVENTGX AND BRYAN COMMERCE AND DEVELOPMENT, INC.**

This First Amended Performance Agreement (First Amended Agreement) 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”) is made effective as of Dec. 8, 2014, (the “Effective Date”).

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, On July 10, 2014, BCD entered into a Performance Agreement with Developer (the “Agreement”) for the purposes of redeveloping the Ice House, a historic commercial building owned by BCD (the “Property”) and 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, under the terms of the Agreement, BCD will convey the Property to the Developer for no monetary consideration, and the Developer shall 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.

WHEREAS, as a condition precedent to the conveyance of the Property to Developer, the Developer is required under the terms of the Agreement to 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 an amount sufficient to satisfy a minimum investment requirement of Two Million Dollars (\$2,000,000.00) (“Minimum Investment Requirement”), or other evidence of commitment satisfactory to BCD. Should the Developer be unable to furnish to BCD a commitment for the financing as described above before the expiration of the Due Diligence Period, the Agreement terminates.

WHEREAS, the parties now wish to modify the terms of the conditions precedent to the conveyance of the Property to Developer contained in the Agreement to assist the Developer in obtaining initial construction financing and to require a limited reverter clause be included in the deed of conveyance;

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 to the following amendment:

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 32 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 being CITY OF BRYAN TOWNSITE, BLOCK 267, LOTS 1-5, Bryan, Brazos County, Texas (the "Property")., subject to Permitted Encumbrances and Reservations. 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 deed of conveyance shall include a reverter clause which shall state as follows: There is further reserved unto the Grantor a reverter subject to a condition subsequent. Grantee covenants that it will invest the sum of five hundred thousand dollars (\$500,000.00) in the construction of Improvements to the Property within twelve (12) months of the effective date of this conveyance. Grantee covenants that it will provide the Grantor with invoices, receipts, building permits, and any other documentation reasonably required by Grantor, evidencing the expenditures prior to the expiration of the twelve (12) month period. If the Grantee fails to provide the documentation establishing compliance with the foregoing requirements, the Property (including any improvements) shall revert back to the Grantor without any requirement of an act to re-enter the property by Grantor.

The conveyance shall be by Special Warranty Deed, in substantially the same form as Exhibit "B", and closing shall occur within 30 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. Approved Structural Stabilization Plan. As a condition precedent to conveyance of the Property, Developer shall submit to the City a Structural 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.

D. 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.

E. 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;
- (ii) invest a minimum of FIVE HUNDRED THOUSAND UNITED STATES DOLLARS (\$500,000.00) in the construction of Improvements to the Ice House within 12 months from the date of conveyance of the Property from BCD to Developer.
- (iii) 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;
- (iv) obtain approval from the HLC prior to undertaking any building exterior modifications (other than items that would be considered maintenance);
- (v) Complete all Renovations and obtain a Certificate Of Occupancy for the entire Ice House building within 32 months after conveyance of the Property; and
- (vi) 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 (Phase1).
- (iv) Within 12 months after conveyance of the Property, invest \$500,000.00 in the construction of Improvements on the Property, to be evidenced by the submittal to BCD of paid invoices prior to the expiration of the 12 month period.
- (v) Within 32 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 32 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.

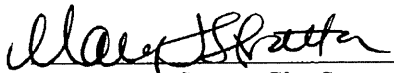
12.14 Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

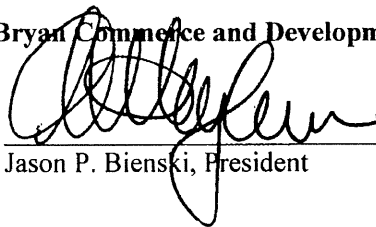
12.15 Duplicate Originals. The parties hereto have executed this Agreement in duplicate originals, each of equal dignity. Each party has stated the execution date below the signature of its authorized representative. If the parties sign this Agreement on different dates, the later date shall be the effective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

EXECUTED THIS THE 8th DAY OF Dec., 2014.

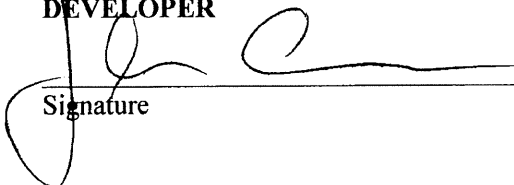
ATTEST:

Bryan Commerce and Development, Inc.


Mary Lynne Stratta, City Secretary


FOR Jason P. Bienski, President

DEVELOPER


Signature

Jose Quintana, President of AdventGX Corporation

APPENDIX "A"

DESCRIPTION OF THE PROPERTY

Property (including any improvements):

All of that certain tract or parcel of land lying and being situated in the CITY OF BRYAN, Brazos County, Texas, and being a part of Block No. Two Hundred Sixty-seven (267), according to a map or plat in common use, found of record in Volume "H" page 721 of the Deed Records of Brazos County, Texas, and further being a part of Block 267 as shown on a drawing attached to the Minutes of the Regular Meeting of the Bryan City Council on January 8, 1909, creating by resolution a designation for new blocks 263, 264, 265, 266 and 267, said minutes being attached to an Affidavit executed by Lonnie Stabler, Mayor of the City of Bryan, filed for record on July 3, 2000, recorded in Volume 3858, page 130 of the Official Public Records of Brazos County, Texas, and being more particularly described as follows:

BEGINNING at the southeast corner of said Block No. 267, which is the intersection of the north line of Jackson Street (now 19th Street), with the west line of Railroad Street;

THENCE west along the north line of Jackson Street 131 feet, more or less, to the southeast corner of the property heretofore conveyed by Bryan Ice Company to G. S. Parker by deed dated March 23, 1917, and recorded in Volume 32, page 150 of the Deed Records of Brazos County, Texas;

THENCE north along the east line of the G. S. Parker property to the north line of Block No. 267, a distance of 250 feet to the northeast corner of said G. S. Parker property, which corner is

WITNESSED BY

also in the south line of Webster Street (now 18th Street);

THENCE east along the north line of said Block No. 267, and the south line of Webster Street, 131 feet, more or less to the northeast corner of said Block No. 267, which is in the west line of Railroad Street;

THENCE south with the east line of said Block No. 267, and the west line of Railroad Street, 260 feet to the PLACE OF BEGINNING, containing 0.75 acres, more or less, and being the same land described in the deed to Brazos A. Varisco from Gulf States Utilities Company dated March 15, 1940 and recorded in Volume 103, page 284 and being the same property described in the deed to George G. Chance from Brazos A. Varisco, dated May 1, 1943, recorded in Volume 113, page 21 of the Deed Records of 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.

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

SPECIAL WARRANTY DEED

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 First Amended 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.

There is further reserved unto the Grantor a reverter subject to a condition subsequent. Grantee covenants that it will invest the sum of five hundred thousand dollars (\$500,000.00) in the construction of Improvements to the Property within twelve (12) months of the effective date of this conveyance. Grantee covenants that it will provide the Grantor with invoices, receipts, building permits, and any other documentation reasonably required by Grantor, evidencing the expenditures prior to the expiration of the twelve (12) month period. If the Grantee fails to provide the documentation establishing compliance with the foregoing requirements, the Property (including any improvements) shall revert back to the Grantor without any requirement of an act to re-enter the property by Grantor. Grantor may file evidence of such a condition subsequent by filing a Notice of Reverter in the Official Records of Brazos County, Texas. In the event that Grantee invests the five hundred thousand dollars (\$500,000.00) within twelve (12) months, Grantor shall file a Release of Right of Reverter in the Official Records of Brazos County, Texas.

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.

defined herein shall have the meaning ascribed to those same terms as set forth in the Performance Agreement described above.

Executed this ____ day of December, 2014 by:

GRANTOR:
Bryan Commerce and Development, Inc.

By: _____
Jason P. Bienski, President

ATTEST

APPROVED AS TO FORM

Mary Lynne Stratta, Secretary

Janis K. Hampton, City Attorney

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

THIS INSTRUMENT was acknowledged before me on the ____ day of December 14, 2014, 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.

**SECOND AMENDMENT TO PERFORMANCE AGREEMENT
BETWEEN ADVENTGX AND BRYAN COMMERCE AND DEVELOPMENT, INC.**

This Second Amendment ("Second Amendment") is made on this the 29 day of Sept., 2017, and amends the Performance Agreement between Bryan Commerce and Development, Inc. ("BCD"), a local government corporation, and AdventGX, Inc. ("Developer") a Texas Corporation, which was executed on July 10, 2014 and amended for the first time on December 8, 2014.

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; and

WHEREAS, On July 10, 2014, BCD entered into a Performance Agreement with Developer ("Agreement") for the purposes of redeveloping the Ice House, a historic commercial building owned by BCD ("Property") and to facilitate the redevelopment of the downtown north area of Bryan ("Area") and to develop restaurant, retail, office, research, innovation and event space uses in the Area; and

WHEREAS, under the terms of the Agreement, BCD will convey the Property to the Developer for no monetary consideration, and the Developer shall invest, directly or via its designated tenants, a minimum of \$2,500,000 in the Renovation of the Ice House and the construction of other improvements upon the Property; and

WHEREAS, as a condition precedent to the conveyance of the Property to Developer, the Developer is required to 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 an amount sufficient to satisfy a minimum investment requirement of \$2,000,000.00 ("**Minimum Investment Requirement**"), or other evidence of commitment satisfactory to BCD; and

WHEREAS, the parties first amended the Agreement to modify the terms of the conditions precedent to the conveyance of the Property to Developer contained in the Agreement to assist the Developer in obtaining initial construction financing and to require a limited reverter clause be included in the deed of conveyance; and

WHEREAS, the parties now wish to amend the Agreement to extend the deadline to complete the construction and investment in the Property; and

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 to the following amendment:

AMENDMENT

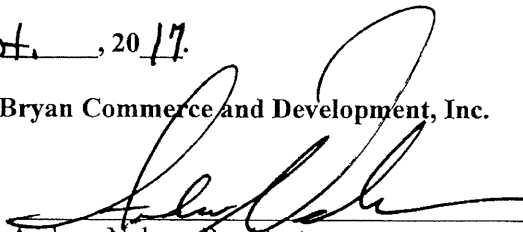
1. All terms and conditions of the Agreement, as previously amended, remain in full force and effect except as otherwise provided herein. All capitalized terms shall have the meaning given by the First Amended Agreement.
2. The parties agree that Developer will be in compliance with the Agreement if \$2,000,000 is invested into the Property and a partial Certificate of Occupancy is obtained by August 31, 2017.
3. The parties agree that Developer will be in compliance with the Agreement if the full \$2,500,000 is invested into the Property and a final Certificate of Occupancy is obtained by January 15, 2018.

EXECUTED THIS THE 29 DAY OF Sept., 2017.

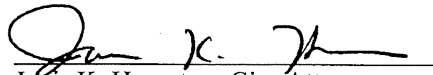
ATTEST:

Bryan Commerce and Development, Inc.

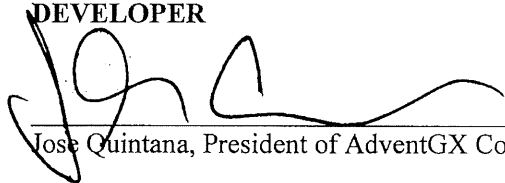

Mary Lynne Stratta, Secretary

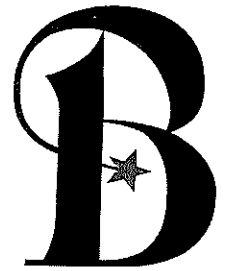

Andrew Nelson, President

APPROVED AS TO FORM


Janis K. Hampton, City Attorney

DEVELOPER


Jose Quintana, President of AdventGX Corporation



CITY OF BRYAN
The Good Life, Texas Style.™

February 21, 2020

VIA HAND DELIVERY

AdventGX
c/o Jose Quintana
1700 Research Parkway, Ste. 165
College Station, Texas 77845

**RE: Notice of Default, Performance Agreement AdventGX, and Bryan
Commerce and Development; Renovation of Ice House; City of Bryan
Townsite, Block 267, Lots 1-5**

Dear Mr. Quintana:

The purpose of this letter is to put AdventGX, Inc. ("AGX") on notice of an event of default under the above referenced performance agreement ("Agreement"). Specifically, the Agreement, as amended, afforded more than thirty-two (32) months to complete the renovation of the entire Ice House building. Furthermore, at least twenty-five percent (25%) of the square footage was to be devoted to restaurant and retail uses. As of the date of this letter, significant portions of the Ice House remain unfinished and restaurant retail uses occupy only approximately 14% of the square footage.

At this time, Bryan Commerce and Development, Inc. ("BCD") is tendering a demand for repayment of the \$300,000 Benefit, as set forth in section 8.1 of the Agreement. AGX has ninety (90) days from the date of this notice to cure the default or the Benefit shall become immediately due and payable. BCD has tacitly granted more than two (2) years of additional time to meet the obligations as set forth in the Agreement, to no avail. While the Agreement has since expired, pursuant to Section 9.1 of the Agreement, the AGX's payment obligations survive expiration of the Term.

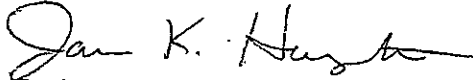
In the interest of compromise, BCD is comfortable with the renovated meeting space as a substantially equivalent alternative to the innovation space previously agreed upon, so that condition need not be met. Further, BCD is willing to extend the deadline to cure, provided that AGX can produce reasonable plans for completion of the renovation. The plans must be provided in sixty (60) days so that BCD has an opportunity to review the plans and present them to the BCD Board for approval. The plans must include retail or restaurant space that will, when combined with existing restaurant space, exceed the required twenty-five percent (25%) threshold. Plans must include a reasonable timeline for completion of the renovation.

EXHIBIT "D"

If you have any questions or concerns regarding this notice and/or the requirements for plans, please direct those questions to Lindsey Guindi, Director of Strategic Projects, (979) 209-5076.

Thank you for your prompt attention to this matter.

Sincerely,



Janis K. Hampton

City Attorney

For Bryan Commerce and Development, Inc.

EXHIBIT "D"



October 6, 2020

CMRRR #7016-0340-0000-7903-0415

AdventGX, Inc.
c/o Jose Quintana
216 W. 26th Street
Bryan, TX 77803

RE: DEMAND LETTER; DEFAULT in Performance Agreement AdventGX, Inc. and Bryan Commerce and Development, Inc.; Renovation of Ice House; City of Bryan Townsite, Block 267, Lots 1-5

Dear Mr. Quintana,

AdventGX, Inc. ("AGX") is in default of that certain Performance Agreement, as amended, between Bryan Commerce and Development ("BCD") and AGX concerning the referenced Property by failure to complete renovation and obtain a final Certificate of Occupancy for the fully renovated building, failure to occupy the Property with a minimum of 25% of the square footage devoted to restaurant and retail uses, and failure to invest \$2,500,000.00 in improvements. On February 21, 2020, BCD gave AGX notice of default under the Agreement and provided ninety (90) days to either tender payment pursuant to the Payback Provision or cure the default.

AGX's response to the notice of default did not provide an excuse for the default as it did not address completion of the building and it mischaracterized the event space as retail space. AGX has not paid the amount demanded nor provided plans to complete the renovation of the Property and cure the default, as specified in the February 12th letter. The ninety (90) day deadline has expired. Pursuant to Section 9.1 of the Agreement, AGX's payment obligation survives expiration of the Term of said Agreement. BCD hereby DEMANDS payment of \$300,000 as repayment of the Benefit under the Payback Provision of the Agreement.

Payment is due immediately. If you have not tendered payment within thirty (30) days from the date of this letter, BCD may elect to file suit for breach of contract and seek a judgment for the amount owed, plus attorney's fees and costs of court.

EXHIBIT "E"

Thank you for your prompt attention to this matter.

Sincerely,



Janis K. Hampton
City Attorney
For Bryan Commerce and Development, Inc.

cc: Lindsey Guindi

EXHIBIT "E"

CAUSE NO. 21-001939-CV-361

| | | |
|---|---|-------------------------------------|
| BRYAN COMMERCE and DEVELOPMENT INC., | § | IN THE DISTRICT COURT OF |
| | § | |
| | § | |
| <i>Plaintiff,</i> | § | |
| v. | § | BRAZOS COUNTY, TEXAS |
| | § | |
| ADVENTGX, INC., | § | |
| <i>Defendant.</i> | § | 361 st JUDICIAL DISTRICT |

DEFENDANT’S ORIGINAL ANSWER

COMES NOW Defendant AdventGX, Inc., and files its Original Answer and would respectfully show the Court as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation in Plaintiff’s Original Petition.

Defendant invokes the provisions of Rule 92 of the Texas Rules of Civil Procedure and requires the Plaintiff to prove all allegations by a preponderance of the evidence to a Judge or a Jury.

SPECIFIC DENIALS

Defendant will show that the contract(s) in question are ambiguous.

Defendant will show that it complied or substantially complied with the contract(s) in question.

JURY DEMAND

Pursuant to Rule 504.1 of the Texas Rules of Civil Procedure, Defendant hereby demands a jury and tenders its jury fee herewith.

RULE 167/CHAPTER 42 DECLARATION

The settlement procedures allowed by Chapter 42 of the TCPRC and Rule 167 of the TRCP are available in the action.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this matter be set for hearing, and that upon final hearing, the Court dismiss Plaintiff's claims, award Defendant its reasonable and necessary attorney's fees, and award Defendant all other relief to which it is justly entitled, at law or at equity.

Respectfully submitted,

LAW OFFICE OF BRIAN TURNER

308 N. Washington Ave.

Bryan, TX 77803

979-583-9200

979-314-9533 - Fax

bt@brianturnerlaw.com

By: /s/ Brian Turner

Brian Turner

State Bar No. 20310450

CERTIFICATE OF SERVICE

I hereby certify that in compliance with the provisions of Rule 21a, a true and correct copy of the above and foregoing was served on all counsel of record, via email, on this 18th day of August 2021.

/s/ Brian Turner

Brian Turner

CAUSE NO. 21-001939-CV-361

| | | |
|---|---|-------------------------------------|
| BRYAN COMMERCE and DEVELOPMENT INC., | § | IN THE DISTRICT COURT OF |
| | § | |
| | § | |
| <i>Plaintiff,</i> | § | |
| v. | § | BRAZOS COUNTY, TEXAS |
| | § | |
| ADVENTGX, INC., | § | |
| <i>Defendant.</i> | § | 361 st JUDICIAL DISTRICT |

DEFENDANT’S 1st AMENDED ANSWER

COMES NOW Defendant AdventGX, Inc., and files its 1st Amended Answer and would respectfully show the Court as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation in Plaintiff’s Original Petition.

Defendant invokes the provisions of Rule 92 of the Texas Rules of Civil Procedure and requires the Plaintiff to prove all allegations by a preponderance of the evidence to a Judge or a Jury.

SPECIFIC DENIALS

Defendant will show that the contract(s) in question are ambiguous. Specifically, “devoted to”, “dedicated to”, and “retail use” are not defined terms by the Performance Agreement and First Amended Performance Agreement in “Intended Use” and are subject to two or more reasonable interpretations. Additionally, “substantially comply” in paragraph 7.1 of the Performance Agreement and First Amended Performance Agreement is ambiguous and is subject to two or more reasonable interpretations. Finally, “invest”, found in 3.1 of the Performance Agreement and First Amended Performance Agreement is ambiguous and is subject to two or more reasonable interpretations.

Defendant will show that it complied or substantially complied with the contract(s) in question.

JURY DEMAND

Pursuant to Rule 504.1 of the Texas Rules of Civil Procedure, Defendant hereby demands a jury, and the jury fee has previously been tendered.

RULE 167/CHAPTER 42 DECLARATION

The settlement procedures allowed by Chapter 42 of the TCPRC and Rule 167 of the TRCP are available in this action. Defendant seeks the recovery of its reasonable and necessary attorney's fees pursuant to §42.004 of the Texas Civil Practice & Remedies Code and Rule 167.4 of the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this matter be set for hearing, and that upon final hearing, the Court dismiss Plaintiff's claims, award Defendant its reasonable and necessary attorney's fees, and award Defendant all other relief to which it is justly entitled, at law or at equity.

Respectfully submitted,

LAW OFFICE OF BRIAN TURNER

308 N. Washington Ave.

Bryan, TX 77803

979-583-9200

979-314-9533 - Fax

bt@brianturnerlaw.com

By: /s/ Brian Turner

Brian Turner

State Bar No. 20310450

CERTIFICATE OF SERVICE

I hereby certify that in compliance with the provisions of Rule 21a, a true and correct copy of the above and foregoing was served on all counsel of record, via email, on this 28th day of October 2021.

/s/ Brian Turner

Brian Turner

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 58633317
Status as of 10/28/2021 2:45 PM CST

Associated Case Party: AdventGX, Inc.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|-----------------------|-----------------------|--------|
| Brian Turner | | bt@brianturnerlaw.com | 10/28/2021 2:01:16 PM | SENT |

Associated Case Party: Bryan Commerce and Development, Inc.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|-----------------|-----------|-----------------------|-----------------------|--------|
| Wayne T.Rife | | w.rife@rifelaw.com | 10/28/2021 2:01:16 PM | SENT |
| Aaron T.Hubbard | | a.hubbard@rifelaw.com | 10/28/2021 2:01:16 PM | SENT |
| Veronica Gray | | v.gray@rifelaw.com | 10/28/2021 2:01:16 PM | SENT |

CAUSE NO. 21-001939-CV-361

| | | |
|--------------------------------------|---|-------------------------------------|
| BRYAN COMMERCE and DEVELOPMENT INC., | § | IN THE DISTRICT COURT OF |
| | § | |
| | § | |
| <i>Plaintiff,</i> | § | |
| v. | § | BRAZOS COUNTY, TEXAS |
| | § | |
| ADVENTGX, INC., | § | |
| <i>Defendant.</i> | § | 361 st JUDICIAL DISTRICT |

DEFENDANT’S 2nd AMENDED ANSWER

COMES NOW Defendant AdventGX, Inc., and files its 2nd Amended Answer and would respectfully show the Court as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation in Plaintiff’s Original Petition.

Defendant invokes the provisions of Rule 92 of the Texas Rules of Civil Procedure and requires the Plaintiff to prove all allegations by a preponderance of the evidence to a Judge or a Jury.

SPECIFIC DENIALS

Defendant will show that the contract(s) in question are ambiguous. Specifically, “devoted to”, “dedicated to”, and “retail use” are not defined terms by the Performance Agreement and First Amended Performance Agreement in “Intended Use” and are subject to two or more reasonable interpretations. These terms mean: to decide that something will be used for a special purpose.

Additionally, “substantially comply” in paragraph 7.1 of the Performance Agreement and First Amended Performance Agreement is ambiguous and is subject to two or more reasonable interpretations. This term means that the performance satisfies its purpose or objective even though its formal requirements are not complied with.

“Invest”, found in 3.1 of the Performance Agreement and First Amended Performance Agreement is ambiguous and is subject to two or more reasonable interpretations. “Invest” can be directly or indirectly through Ronin and can include actual time expended in managing the

construction project, as well as time spent working on site preparation, remodeling and construction.

Finally, “retail use is not defined terms by the Performance Agreement and First Amended Performance Agreement in “Intended Use” and is subject to two or more reasonable interpretations. This term refers to: the activity of selling goods or services directly to consumers or end-users. Retailing often occurs in retail stores or service establishments but may also occur through direct selling such as through vending machines, door-to-door sales, or electronic channels. Although the idea of retail is often associated with the purchase of goods, the term may be applied to service providers that sell to consumers. Retail service providers include retail banking, tourism, insurance, private healthcare, private education, private security firms, legal firms, publishers, public transport and others.

Defendant will show that it complied or substantially complied with the contract(s) in question.

JURY DEMAND

Pursuant to Rule 504.1 of the Texas Rules of Civil Procedure, Defendant hereby demands a jury, and the jury fee has previously been tendered.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this matter be set for hearing, and that upon final hearing, the Court dismiss Plaintiff’s claims, award Defendant its taxable costs, and award Defendant all other relief to which it is justly entitled, at law or at equity.

Respectfully submitted,

LAW OFFICE OF BRIAN TURNER
308 N. Washington Ave.
Bryan, TX 77803
979-583-9200
979-314-9533 - Fax
bt@brianturnerlaw.com

By: /s/ Brian Turner
Brian Turner
State Bar No. 20310450

CERTIFICATE OF SERVICE

I hereby certify that in compliance with the provisions of Rule 21a, a true and correct copy of the above and foregoing was served on all counsel of record, via email, on this 15th day of November 2021.

/s/ Brian Turner

Brian Turner

Automated Certificate of eService

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Envelope ID: 59143056
Status as of 11/15/2021 8:55 AM CST

Associated Case Party: AdventGX, Inc.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|-----------------------|-----------------------|--------|
| Brian Turner | | bt@brianturnerlaw.com | 11/15/2021 8:25:01 AM | SENT |

Associated Case Party: Bryan Commerce and Development, Inc.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|--------------------|-----------------------|--------|
| Wayne T.Rife | | w.rife@rifelaw.com | 11/15/2021 8:25:01 AM | SENT |
| Veronica Gray | | v.gray@rifelaw.com | 11/15/2021 8:25:01 AM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------------|-----------------------|--------|
| Tiffany Chambers | | tchambers@brazoscountytexas.gov | 11/15/2021 8:25:01 AM | SENT |

CAUSE NO. 21-001939-CV-361

| | | |
|---|---|-------------------------------------|
| BRYAN COMMERCE and DEVELOPMENT INC., | § | IN THE DISTRICT COURT OF |
| | § | |
| | § | |
| <i>Plaintiff,</i> | § | |
| v. | § | BRAZOS COUNTY, TEXAS |
| | § | |
| ADVENTGX, INC., | § | |
| <i>Defendant.</i> | § | 361 st JUDICIAL DISTRICT |

DEFENDANT’S 3rd AMENDED ANSWER

COMES NOW Defendant AdventGX, Inc., and files its 3rd Amended Answer and would respectfully show the Court as follows:

GENERAL DENIAL

Defendant generally denies each and every allegation in Plaintiff’s Original Petition.

Defendant invokes the provisions of Rule 92 of the Texas Rules of Civil Procedure and requires the Plaintiff to prove all allegations by a preponderance of the evidence to a Judge or a Jury.

SPECIFIC DENIALS

Defendant will show that the contract(s) in question are ambiguous. Specifically, “devoted to”, “dedicated to”, and “retail use” are not defined terms by the Performance Agreement and First Amended Performance Agreement in “Intended Use” and are subject to two or more reasonable interpretations. These terms mean: to decide that something will be used for a special purpose.

Additionally, “substantially comply” in paragraph 7.1 of the Performance Agreement and First Amended Performance Agreement is ambiguous and is subject to two or more reasonable interpretations. This term means that the performance satisfies its purpose or objective even though its formal requirements are not complied with.

“Invest”, found in 3.1 of the Performance Agreement and First Amended Performance Agreement is ambiguous and is subject to two or more reasonable interpretations. “Invest” can be directly or indirectly through Ronin and can include actual time expended in managing the

construction project, as well as time spent working on site preparation, remodeling and construction.

Finally, “retail use is not defined terms by the Performance Agreement and First Amended Performance Agreement in “Intended Use” and is subject to two or more reasonable interpretations. This term refers to: the activity of selling goods or services directly to consumers or end-users. Retailing often occurs in retail stores or service establishments but may also occur through direct selling such as through vending machines, door-to-door sales, or electronic channels. Although the idea of retail is often associated with the purchase of goods, the term may be applied to service providers that sell to consumers. Retail service providers include retail banking, tourism, insurance, private healthcare, private education, private security firms, legal firms, publishers, public transport and others.

Defendant will show that it complied or substantially complied with the contract(s) in question.

Defendant will also show, by way of Affirmative Defense, that Plaintiff waived its rights to complain of its alleged breaches.

JURY DEMAND

Pursuant to Rule 504.1 of the Texas Rules of Civil Procedure, Defendant hereby demands a jury, and the jury fee has previously been tendered.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this matter be set for hearing, and that upon final hearing, the Court dismiss Plaintiff’s claims, award Defendant its taxable costs, and award Defendant all other relief to which it is justly entitled, at law or at equity.

Respectfully submitted,

LAW OFFICE OF BRIAN TURNER
308 N. Washington Ave.
Bryan, TX 77803
979-583-9200
979-314-9533 - Fax
bt@brianturnerlaw.com

By: /s/ Brian Turner

Brian Turner

State Bar No. 20310450

CERTIFICATE OF SERVICE

I hereby certify that in compliance with the provisions of Rule 21a, a true and correct copy of the above and foregoing was served on all counsel of record, via email, on this 19th day of October 2023.

/s/ Brian Turner

Brian Turner

Automated Certificate of eService

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Envelope ID: 80754548

Filing Code Description: Amended Filing

Filing Description: Defendant's 3rd Amended Answer

Status as of 10/19/2023 10:33 AM CST

Associated Case Party: AdventGX, Inc.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|-----------------------|-----------------------|--------|
| Brian Turner | | bt@brianturnerlaw.com | 10/19/2023 9:54:35 AM | SENT |

Associated Case Party: Bryan Commerce and Development, Inc.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|--------------------|-----------------------|--------|
| Wayne T.Rife | | w.rife@rifelaw.com | 10/19/2023 9:54:35 AM | SENT |
| Veronica Gray | | v.gray@rifelaw.com | 10/19/2023 9:54:35 AM | SENT |

Associated Case Party: Ronin

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------------------|-----------------------|--------|
| Tiffany Chambers | | tchambers@brazoscountytexas.gov | 10/19/2023 9:54:35 AM | SENT |