

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

**THIRD RESTATED AS AMENDED
 TAX ABATEMENT AGREEMENT**

by and between
FORT BEND COUNTY
 and
BEN E. KEITH COMPANY

WHEREAS, Ben E. Keith Company and Fort Bend County, Texas entered into a Tax Abatement Agreement on about November 6, 2007 (hereinafter, "2007 Agreement"), a First Restated as Amended Tax Abatement Agreement (hereinafter, "First Amendment") on about November 4, 2008, and a Second Restated as Amended Tax Abatement Agreement (hereinafter, "Second Amendment") on or about January 25, 2011; and

WHEREAS, due to unforeseeable circumstances and for the convenience of the parties and for ease of reference, the parties wish to restate the 2007 Agreement with all its amendments (including the First Amendment and Second Amendment) and their exhibits in this Third Restated as Amended Tax Abatement Agreement.

AGREEMENT

This Third Restated as Amended Tax Abatement Agreement (hereinafter, "Agreement") is executed by and between **FORT BEND COUNTY, TEXAS**, hereinafter referred to as "County," acting by and through its Commissioners Court, and **BEN E. KEITH COMPANY**, a Texas Corporation, hereinafter referred to as "Owner," of the Real Property located within the City of Missouri City Reinvestment Zone No. 4, established by City of Missouri City Ordinance No. O-07-25, adopted May 21, 2007, attached hereto as Exhibit A and incorporated herein for all purposes.

NOW THEREFORE, the parties do hereby restate and amend the 2007 Agreement, the First Amendment and Second Amendment, and their Exhibits with this Agreement.

1. Authorization

- a. This Agreement is authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the TEXAS TAX CODE as it exists on the effective date of this Agreement, and;
- b. The Amended Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones created by Fort Bend County, Texas, which was approved by the Fort Bend County Commissioners Court on January 2, 2006 and February 3, 2009. County has determined that the request for Tax Abatement presented by Owner conforms with the criteria established in the Guidelines for Tax Abatement.
- c. No official of County has an interest in the property subject to this Agreement.

- d. The parties admit and agree that all meetings, applications, and conditions necessary for the parties to enter into this Agreement have been performed and satisfied.

2. **Definitions:**

As used in this Agreement, the following terms shall have the meanings set forth below:

- a. The “**Certified Appraised Value or Value**” means the value certified as of January 1 of each year of this Agreement regarding the property within City of Missouri City Reinvestment Zone No. 4 by the Fort Bend County Central Appraisal District.
- b. “**Phase I Improvements**” means a building to be used as a warehouse and distribution center, located on the Real Property and containing at least 300,000 square feet of floor space, any other building and structures (which may include, but is not limited to, a branch office building, a truck maintenance building and offices, a truck wash, a guard shack, a fueling station), and any sidewalks, parking lots, roads, outdoor lighting, landscaping and other improvements to serve the building, all as approximately shown in Exhibit B, attached to and incorporated into this Agreement by reference.
- c. “**Phase II Improvements**” means a building to be used as a warehouse and distribution center, located on the Real Property and containing at least 100,000 square feet of floor space, any other buildings and structures, and any sidewalks, parking lots, roads, outdoor lighting, landscaping and other improvements to serve the buildings, all as approximately shown in Exhibit B, attached to and incorporated into this Agreement by reference.
- d. “**Real Property**” means the approximate eighty-two (82) acre tract of real property as described in Ordinance No. O-07-25, which created Reinvestment Zone No. 4 located within City of Missouri City, described in Exhibit “A” attached hereto and incorporated by reference herein for all purposes.
- e. “**Abatement**” means the full or partial exemption from ad valorem taxes of certain property in city of Missouri City Reinvestment Zone No. 4 designated for economic development purposes.
- f. “**Eligible Property**” Abatement may be extended to fixed machinery and equipment, necessary to the operation and administration of the facility. Eligible Property is subject to abatement under the same terms as Improvements only if specifically included in Paragraphs 6(c) and 7(c).
- g. “**Ineligible Property**” means land, existing improvements, tangible personal property that the Fort Bend Central Appraisal District classifies as inventory or supplies, real property used primarily to provide retail sales or services to the public, real property used for residential purposes, tangible personal property classified as furnishings, tangible personal property located in the reinvestment zone prior to the execution date of the tax abatement agreement, real property with a productive life of less than 10 years, or any other property for which abatement is not allowed by state law.

- h. “**Owner**” means **Ben E. Keith Company**, the Owner of the Real Property subject to this Agreement, or other person or entity to which this Agreement is assigned, with prior written approval of the Fort Bend County Commissioners Court.
- i. “**County**” means the County of Fort Bend, Texas.
- j. “**District**” means Fort Bend Central Appraisal District.

3. **Subject Property**

City of Missouri City Reinvestment Zone No. 4 is an area located in Fort Bend County, Texas, being legally described in Exhibit “A” attached hereto and incorporated herein for all purposes. The Fort Bend Appraisal District has established the base-year values for the subject property as of January 1, 2008.

4. **Responsibility of Owner for Phase I Improvements (“Phase I Provisions”)**

In consideration of receiving the tax abatement granted herein, Owner represents and agrees:

- a. Construction of Phase I Improvements shall be completed on or before September 1, 2013. Owner shall provide Tax Assessor/Collector a certified statement evidencing a minimum of \$56,000,000 in project costs with respect to the design and construction of the Phase I Improvements within sixty (60) days after their completion.
- b. The certified appraised value of Phase I Improvements on January 1 of each year that taxes are abated under this Agreement’s Phase I Provisions must have a minimum value of \$56,000,000. Failure to meet the requirements of this section will invalidate the tax abatement for the year this requirement was not satisfied, unless cured in conformity with this Agreement.
- c. Beginning on January 1, 2014 and continuing through December 31, 2022, Owner shall have and maintain at least 210 employees at the Phase I Improvements (including delivery, sales, and other personnel who work off-site). Failure of Owner to comply with this provision for any 90 consecutive days during an abatement year shall not be a default of this Agreement, but shall automatically invalidate the tax abatement for the year this requirement was not satisfied, not subject to cure.
- d. If the requirements of paragraph 4(b) (relating to the value of Phase I Improvements) are not met for the Phase I Improvements for any year subject to

this Agreement, the failure will not be a default of this Agreement and Owner may cure such condition and receive an abatement on the assessed value, if Owners pays the County the full taxes on the difference between the assessed value and the required value of paragraph 4(b), as well as all taxes not subject to abatement under this Agreement. For instance, if the certified appraised value of the Improvements is \$50,000,000 in any year and the contractually required amount is \$56,000,000, Owner shall receive an abatement on the assessed value of \$50,000,000, but pay the County a sum equal to the full taxes on \$6,000,000, in addition to all other taxes due.

- e. The requirements of paragraph 4(d) are contractual in nature and are not subject to the TEXAS PROPERTY TAX CODE.
- f. Owner has, as of the effective date of this Agreement, the financial resources to implement the above representations.
- g. Owner will participate in the continuing economic development process in Fort Bend County by becoming a trustee member of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of this Agreement's Phase I Provisions. The fees for Owner's trustee membership are currently and shall remain \$6,000 per annum for the duration of this Agreement's Phase I Provisions.
- h. **OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- i. **OWNER SHALL BE RESPONSIBLE FOR REQUESTING AN ASSIGNMENT OF THIS AGREEMENT IN THE EVENT THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT IS SOLD OR ASSIGNED. FAILURE OF OWNER TO NOTIFY THE TAX ASSESSOR-COLLECTOR OF ANY SALE OF THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT SHALL RESULT IN DEFAULT OF THIS AGREEMENT.**

5. **Responsibility of Owner for Phase II Improvements (“Phase II Provisions”)**

In consideration of receiving the Phase II Tax Abatement granted herein, Owner represents and agrees:

- a. Construction of Phase II Improvements shall be completed on or before December 31, 2019, if Owner elects to participate in the Phase II Provisions and receive the Phase II Abatement. Owner shall provide Tax Assessor/Collector a certified statement evidencing a minimum of \$15,000,000 in project costs with respect to the design and construction of the Improvements within sixty (60) days after their completion. The Phase II Improvements are at the sole discretion of Owner and Owner’s failure to build any Phase II Improvements shall not be a breach of this Agreement, nor shall it in any manner affect any prior abatement under the Phase I Provisions. The only consequence of Owner’s failure to build the Phase II Improvements in compliance with the Phase II Provisions shall be the forfeiture of the Phase II Abatements.
- b. The certified appraised value of Phase II Improvements on January 1 of each year that taxes are abated under this Agreement’s Phase II Provisions must have a minimum value of \$15,000,000. Failure to meet the requirements of this section will invalidate the tax abatement for the year this requirement was not satisfied, unless cured in conformity with this Agreement.
- c. If Owner elects to participate in the Phase II Provisions, beginning on January 1, 2020 and continuing through December 31, 2029, Owner shall have and maintain 300 employees at the combined Phase I and Phase II Improvements (including delivery, sales, and other personnel who work off-site). Failure of Owner to comply with this provision for any 90 consecutive days during an abatement year shall not be a default of this Agreement, but shall automatically invalidate the tax abatement for the year this requirement was not satisfied, not subject to cure.
- d. If the requirements of paragraph 5(b) (relating to the value of the Phase II Improvements) are not met for the Phase II Improvements for any year subject to this Agreement, the failure will not be a default of this Agreement and Owner may cure such condition and receive an abatement on the assessed value, if Owner pays the County the full taxes on the difference between the assessed value and the required value of paragraph 5(b), as well as all taxes not subject to abatement under this Agreement. For instance, if the certified appraised value of the

Improvements is \$10,000,000 in any year and the contractually required amount is \$15,000,000, Owner shall receive an abatement on the assessed value of \$10,000,000, but pay the County the full taxes on \$5,000,000, in addition to all other taxes due.

- e. The requirements of paragraph 5(d) are contractual in nature and are not subject to the TEXAS PROPERTY TAX CODE.
- f. Owner has, as of the effective date of this Agreement, the financial resources to implement the above representations.
- g. Owner will participate in the continuing economic development process in Fort Bend County by becoming a trustee member of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of this Agreement's Phase II Provisions. The fees for Owner's trustee membership are currently and shall remain \$6,000 per annum for the duration of this Agreement's Phase II Provisions.
- h. **OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- i. **OWNER SHALL BE RESPONSIBLE FOR REQUESTING AN ASSIGNMENT OF THIS AGREEMENT IN THE EVENT THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT IS SOLD OR ASSIGNED. FAILURE OF OWNER TO NOTIFY THE TAX ASSESSOR/COLLECTOR OF ANY SALE OF THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT SHALL RESULT IN DEFAULT OF THIS AGREEMENT.**

6. **Value and Term of Abatement – Phase I Improvements (“Phase I Provisions”)**

a. This Agreement shall be effective on the date executed by County or Owner, whichever is later. Notwithstanding the foregoing, this Agreement shall relate back to the effective date of the 2007 Agreement. Phase I of this Agreement shall terminate (unless earlier terminated in accordance with the terms hereof) on December 31, 2022. In no event shall this agreement extend beyond December 31, 2022 for Phase I Provisions. This Agreement shall terminate upon the completion of the abatements, unless earlier terminated as provided

elsewhere herein. Owner's obligation upon default to pay to County any taxes abated under this Agreement shall not terminate until the abated taxes are paid.

b. In each year this Agreement is in effect for Phase I Provisions, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the Phase I Improvements only.

c. Subject to the limitations imposed by law and conditioned upon the representations outlined in Section 4 herein above, there shall be granted and allowed hereunder a property tax abatement for the following years and in the following amounts on the Value of the Phase I Improvements:

<u>Tax Year</u>	<u>Percentage Abatement</u>
2013	75%
2014	75%
2015	75%
2016	75%
2017	75%
2018	75%
2019	75%
2020	75%
2021	75%
2022	75%
TOTAL =	750%

d. The abatement granted shall not apply to the value of the Real Property, increases, in the value of the Real Property, inventory, Ineligible Property as defined in Paragraph 2(g) above, or Eligible Property as defined in Paragraph 2(f).

e. All Phase I Improvements shall be completed in accordance with applicable laws, ordinances, rules or regulations in effect at the time such Improvements are erected.

f. The Fort Bend Central Appraisal District's determination of values shall be used to determine the value of the property subject to this Agreement. If Owner protests the District's valuation of the property, the valuation placed on the property after the protest is resolved under State law shall be used.

g. On or before September 1 of each year of this Agreement, Owner shall certify in writing to Fort Bend County Tax Assessor/Collector Owner is in compliance with each term of this Agreement.

7. **Value and Term of Abatement – Phase II Improvements (“Phase II Provisions”)**

a. This Agreement shall be effective on the date executed by County or Owner, whichever is later. Phase II of this Agreement shall terminate (unless earlier terminated in

accordance with the terms hereof) on December 31, 2029. In no event shall this agreement extend beyond December 31, 2029 for Phase II Provisions. This Agreement shall terminate on the completion of the abatements, unless earlier terminated as provided elsewhere herein. Owner's obligation upon default to pay to County any taxes abated under this Agreement shall not terminate until the abated taxes are paid.

b. In each year that this Agreement is in effect for Phase II Provisions, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the Phase II Improvements only.

c. Subject to the limitations imposed by law and conditioned upon the representations outlined in Section 5 herein above, there shall be granted and allowed hereunder a property tax abatement for the following years and in the following amounts on the value of the Phase II Improvements:

<u>Tax Year</u>	<u>Percentage Abatement</u>
2020	75%
2021	75%
2022	75%
2023	75%
2024	75%
2025	75%
2026	75%
2027	75%
2028	75%
2029	75%

TOTAL = 750%

d. In the event Owner completes the Phase II Improvements prior to December 31, 2019, the tax abatement will commence on January 1 of the tax year immediately following the year construction is completed and extend for ten years thereafter. It shall be the sole responsibility of Owner to notify County in writing within sixty (60) calendar days of the commencement of construction of the Phase II Improvements. Upon the completion of the construction for the Phase II Improvements, Owner shall provide the form attached as Exhibit C to County and County shall forward the completed form to the District, provided all other requirements of this Agreement have been satisfied by Owner as they relate to the Phase II Improvements. County hereby authorizes the Tax Assessor/Collector to complete the form attached as Exhibit C on behalf of County. County shall have no obligation or duty to inquire of Owner as to the status of the Phase II Improvements. The failure of Owner to comply with the

requirement of this section shall call for the termination of the tax abatement for the Phase II Improvements for which there is no cure.

e. The abatement granted shall not apply to the value of the Real Property, increases in the value of the Real Property, inventory, Ineligible Property as defined in Paragraph 2(g) above, or Eligible Property as defined in Paragraph 2(f).

f. All Phase II Improvements shall be completed in accordance with applicable laws, ordinances, rules or regulations in effect at the time such Improvements are erected.

g. The Fort Bend Central Appraisal District's determination of values shall be used to determine the value of the property subject to this Agreement. If Owner protests the District's valuation of the property, the valuation placed on the property after the protest is resolved under State law shall be used.

h. On or before September 1 of each year of this Agreement, Owner shall certify in writing to Fort Bend County Tax Assessor/Collector that Owner is in compliance with each term of this Agreement.

8. **Taxability – Phase I & Phase II Improvements and Inventory**

During the period that this tax abatement is effective, taxes shall be payable as follows:

- a. The Value of Real Property, Eligible Property, and Ineligible Property shall be fully taxable, including inventory;
- b. The Value of existing Improvements shall be determined in the base year by the Fort Bend Central Appraisal District.

9. **Event of Default - Phase I & Phase II Improvements**

- a. County may declare Owner in default of the Phase I or Phase II Provisions, respectively, of this Agreement if Owner: **(1)** fails to comply with any obligations under the Phase I or Phase II Provisions of this Agreement for the respective Phase I and Phase II Improvements (excluding, however, paragraphs 4(b) and 5(b) above); **(2)** allows County ad valorem taxes on the Subject Property, or any property located thereon, to become delinquent; or **(3)** vacates any of the improvements subject to the Agreement before the term of the Abatement then in effect (i.e. either the Phase I or Phase II Abatement) without prior written approval from County.
- b. County shall notify Owner of any default in writing specifying the default. The Owner shall have thirty (30) days from the date of the notice to cure any default. If Owner fails to cure the default, County may terminate this Agreement by written notice.

- c. If this Agreement is terminated by County due to Owner's default, Owner agrees that it is liable for and will pay to County within thirty (30) days of the termination of this Agreement:
 - i. The amount of all property taxes abated under this Agreement;
 - ii. Interest on the abated amount at the rate provided for in the TEXAS TAX CODE for delinquent taxes; and
 - iii. Penalties on the amount abated in the year of default, at the rate provided for in the TAX CODE for delinquent taxes.
- d. County shall have a lien against Owner and the Real Property and Improvements for the taxes and interest owed because of the recapture of taxes under this paragraph during the time period beginning on the date such payment obligation accrues and continuing until the date paid.

10. **Administration and Inspection – Phase I & Phase II Improvements**

a. This Agreement shall be administered on behalf of Fort Bend County by the Fort Bend County Tax Assessor/Collector or her designee. Owner shall allow employees or other representatives of County, who have been designated by the Tax Assessor/Collector for the specific purpose of ensuring compliance with this Agreement, to have access to the reinvestment zone during the term of the Agreement. All inspections shall be made only after twenty-four (24) hours prior notice and will be conducted in such a manner as not to unreasonably interfere with the construction and/or operation of the facility. A representative of Owner may accompany the inspector at Owner's sole discretion.

b. Upon completion of the contemplated construction, County shall annually evaluate the facility to ensure compliance with the terms and provisions of this Agreement and shall report possible defaults to Owner.

c. The Chief Appraiser of the Fort Bend County Appraisal District shall annually determine (1) the taxable value under the terms of this abatement of the Real Property, Improvements, and other property otherwise located at or about Owner's premises subject to this Agreement and (2) the full taxable value without abatement of the Real Property, Improvements, and other property otherwise located at or about Owner's premises. The Chief Appraiser shall record both abatement taxable value and full taxable value in the appraisal records. In the event termination of this Agreement results in the recapture of abated taxes, the full taxable value figure listed in the appraisal records shall be used to compute the amount of abated taxes.

d. Owner shall furnish the Chief Appraiser annually such information requested by the Chief Appraiser and as provided for under Chapter 22 of the TEXAS TAX CODE as may be necessary for the administration of the abatement. Such information shall also be provided to County Tax Assessor/Collector in preparation of its annual evaluation for compliance with the terms and provisions of this Agreement, including Owner's payroll records. However, Owner shall provide Chief Appraiser and County Tax Assessor/Collector with only those payroll records necessary to determine Owner's compliance with this agreement (i.e. number of employees is appropriate: payroll dollars, taxes, benefits, bonuses are not appropriate) and only to the extent allowed by federal, state, and local laws.

11. **Assignment**

a. This Agreement may not be assigned without prior written consent of County. No assignment shall be effective or approved if either County has declared a default hereunder which has not been cured or the new Owner/assignee is delinquent in the payment of ad valorem taxes owed to County. Approval shall not be unreasonably withheld.

b. Any and all assignments shall contain the same terms and conditions as set out in this Agreement and shall be granted for the remaining term of the original tax abatement agreement only.

12. **Indemnity**

It is understood and agreed between the parties that Owner, in performing its obligations hereunder, is acting independently, and County assumes no responsibilities or liabilities in connection therewith to third parties. **OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS COUNTY AND THE CENTRAL APPRAISAL DISTRICT FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ARISING OUT OF ANY OBLIGATIONS HEREUNDER EXCEPT THAT THE INDEMNITY AND DUTY TO DEFEND SHALL NOT APPLY TO THAT PORTION OF LIABILITIES RESULTING FROM THE INTENTIONAL CONDUCT OR NEGLIGENCE OF COUNTY OR TAXING UNITS, THEIR RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES. OWNER'S INDEMNIFICATION OBLIGATIONS INCLUDE THE PAYMENT OF REASONABLE ATTORNEY'S FEES AND EXPENSES INCURRED IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, AND CAUSES OF ACTION WHICH ARE NOT DUE TO COUNTY'S OR TAXING UNIT'S, OR THEIR REPRESENTATIVES, INTENTIONAL CONDUCT OR NEGLIGENCE. OWNER SHALL BE RESPONSIBLE FOR ALL FEES INCURRED BY COUNTY IN THE**

DEFENSE OF ANY SUCH CLAIMS, SUITS, OR CAUSES OF ACTION SO LONG AS DEFENSE COUNSEL AND COURSES OF ACTION ARE DETERMINED SOLELY BY OWNER. NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED TO PROHIBIT COUNTY FROM INCURRING REPRESENTATION OF ANY SUCH CLAIM, SUIT OR CAUSE OF ACTION AND OWNER SHALL NOT BE RESPONSIBLE FOR ANY SUCH COSTS AND OR FEES SO INCURRED.

13. Force Majeure

If by reason of force majeure Owner is unable to perform any obligation of this Agreement, it shall give notice of the force majeure to County in writing within ten (10) calendar days after Owner first becomes aware of the occurrence relied upon. By doing so, the obligation of Owner to the extent and for the period of time affected by the force majeure, shall be suspended. Owner shall endeavor to remove or overcome the inability with all reasonable effort. For purposes of this provision, “force majeure” shall mean acts of God, landslides, lightning, earthquakes, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, insurrections, riots, wars or other civil or industrial disturbances; orders of any kind of the federal or state government or of any civil or military authority; explosions, fires, breakage or accidents to machinery, lines, or equipment, or the failure of the system or water supply system; or any other cause not reasonably within the control of Owner.

14. Commissioners Court Approval

This Agreement is conditioned entirely upon the approval of the Commissioners Court by the affirmative vote of a majority of the members present at a duly scheduled meeting of the Commissioner’s Court.

15. Compliance with State and Local Regulations

(a) This Agreement shall not be construed to alter or affect the obligations of Owner to comply with any city ordinance or federal or state law or regulation.

(b) Owner and Owner’s successors, executors, administrators, assigns, branches, divisions and departments certify that they do not and will not knowingly employ any undocumented workers. Owner shall repay the total amount of the public benefit (tax abatement) received, with interest at the rate and according to the terms of this Agreement, if Owner is convicted of a violation under 8 U.S.C. Section 1324a (f). Repayment will be due no later than the 120th day after the date County notifies Owner of the violation as provided in Section 9 of this Agreement.

16. **Changes in Tax Laws**

The tax abatement provided in this Agreement is conditioned upon and subject to any changes in the state tax laws during the term of this Agreement.

17. **Miscellaneous**

a. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.

b. In the event of one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The Phase I Provisions and the Phase II Provisions of this Agreement are severable from each other.

c. The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach.

d. Any amendments of this Agreement shall be of no effect unless in writing and signed by both parties hereto.

e. If there is a conflict between this Agreement and Exhibit B, the provisions of this Agreement shall prevail.

18. **Notices**

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to Owner, County, or Tax Assessor at the mailing address as hereinafter set out. If mailed, any notice of communication shall be deemed to be received three (3) business days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to Owner, County, or Tax Assessor at the following addresses:

To the **Tax Assessor/Collector:** The Honorable Patsy Schultz
Fort Bend County Tax Assessor-Collector
500 Liberty, Suite 101
Richmond, Texas 77469

To Owner: Ben E. Keith Company
PO Box 2628
Fort Worth, TX 76113
Attn: Chief Financial Officer

Copy Owner: Ben E. Keith Company
601 East 7th Street
Fort Worth, TX 76102
Attn: Legal Dep't.

To County: Fort Bend County
301 Jackson, Suite 719
Richmond, Texas 77469
Attention: County Judge

Copy County: Fort Bend County Attorney
301 Jackson, Suite 728
Richmond, Texas 77469

Either party may designate a different address by giving the other party ten (10) days written notice thereof. **Failure of Owner to provide County Tax Assessor/Collector thirty (30) days notice of a change of address may result in termination of this Agreement.**

19. **Entire Agreement; Ordinance and Economic Impact Statement**

This Agreement contains the entire Agreement among the parties and supersedes all other negotiations and agreements, whether written or oral. The terms and provisions of this Agreement (without its exhibits) shall control and prevail over the terms and provisions of Exhibit A, Exhibit B, and Exhibit C in case of conflict or ambiguity. Attached hereto are:

- a. Exhibit A – Ordinance No. O-07-25 Designating Reinvestment Zone No. 4;
- b. Exhibit B – Phase I and Phase II Preliminary Design for Improvements;
- c. Exhibit C – Tax Abatement Schedule Form for Phase II Improvements.

EXECUTION PAGE TO FOLLOW

20. **Execution**

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by County, and Owner as of the dates below stated. Owner warrants and represents that the individuals executing this agreement on behalf of Ben E. Keith Company have full authority to execute this Agreement and bind Ben E. Keith Company to the same.

FORT BEND COUNTY

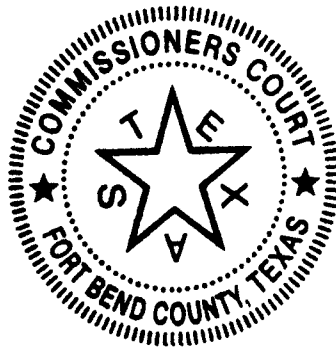
By: 

Robert E. Hebert, County Judge

Date: 12-11-2012

ATTEST: 

Dianne Wilson, County Clerk

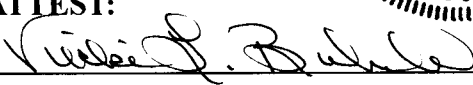


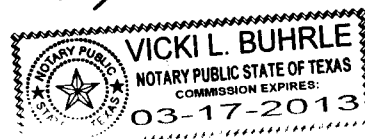
**BEN E. KEITH COMPANY,
A TEXAS CORPORATION.**

By: 

Mike Roach, Vice President

Date: 12/3/12

ATTEST: 



Attachments:

- Exhibit A – Ordinance No. O-07-25 Designating Reinvestment Zone No. 4;
- Exhibit B – Phase I and Phase II Preliminary Design for Improvements;
- Exhibit C – Tax Abatement Schedule Form for Phase II Improvements.

ORDINANCE NO. 0-07-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS, CREATING REINVESTMENT ZONE NO. 4 LOCATED IN THE GESSNER ROAD/INDUSTRIAL DRIVE AREA IN MISSOURI CITY, TEXAS; MAKING RELATED FINDINGS; AND PROVIDING FOR SEVERABILITY.

WHEREAS, City Council has passed and approved Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones Created in Missouri City, Texas; and

WHEREAS, pursuant to the Guidelines, the City has received a request for creation of a reinvestment zone and tax abatement; and

WHEREAS, after proper notice, the City held a public hearing where all interested persons were given an opportunity to speak and evidence for and against the creation of Reinvestment Zone No. 4 was gathered; and

WHEREAS, written notice of the hearing was given to all taxing entities where the proposed zone is to be located; and

WHEREAS, the City Council has determined, based on evidence gathered, that the improvements sought to be located in proposed Reinvestment Zone No. 4 are feasible and practical and would be a benefit to the land to be included in the Zone and to the City after the expiration of the tax abatement agreement; and

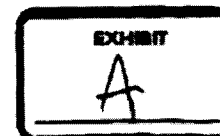
WHEREAS, the creation of Reinvestment Zone No. 4 will be reasonably likely, as a result of its creation, to contribute to the retention or expansion of primary employment or to attract major investment into the Zone that would be a benefit to the property located therein and that will contribute to the economic development of the City of Missouri City; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS:

Section 1. That the facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct, and are made a part of this Ordinance for all purposes.

Section 2. That Reinvestment Zone No. 4 is hereby created for the purpose of encouraging economic development through tax abatement. A

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Last printed 4/18/2007 3:18:00 PM



description of the Zone is attached hereto as Exhibit "A" and is made a part hereto for all purposes.

Section 3. This designation shall be effective for five (5) years from the date of final passage of this Ordinance and may be renewed for periods not to exceed five years.

Section 4. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict only.

Section 5. In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Missouri City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

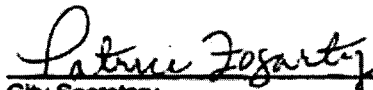
PASSED and APPROVED on first reading this 7th day of May, 2007.

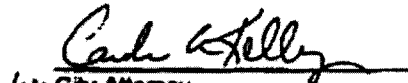
PASSED, APPROVED and ADOPTED on second and final reading this 21st day of May, 2007.


Mayor

ATTEST:

APPROVED AS TO FORM:


City Secretary


City Attorney

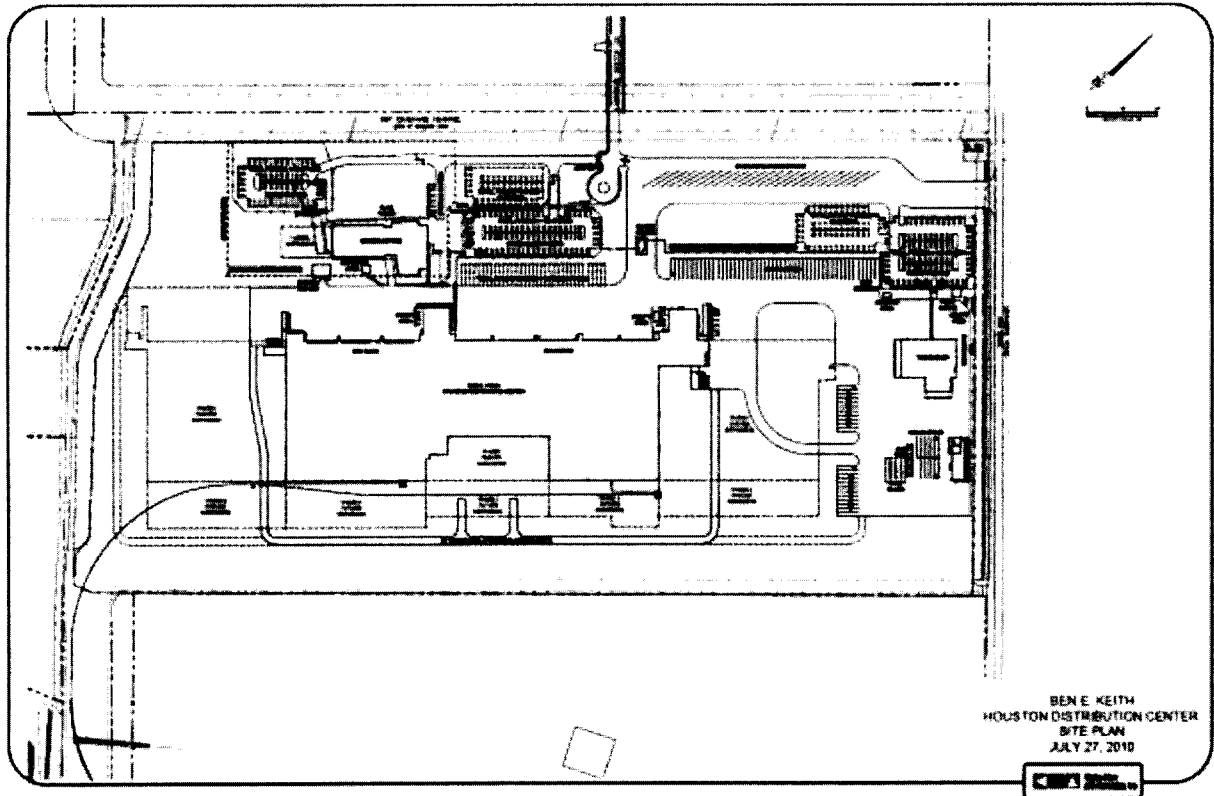


Exhibit C

Pursuant to Section 7(d) of the Tax Abatement Agreement between Fort Bend County and Ben E. Keith Company, approved by Fort Bend County Commissioners Court on January 25, 2010, ("the Agreement"), the Fort Bend Central Appraisal District is hereby notified that the Phase II Improvements, as defined in the Agreement, will be subject to a tax abatement in the following amounts and according to the following schedule, adjusted from the schedule contained in the Agreement:

Tax Year:	Percentage of Abatement
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%

Approved:

Fort Bend County

Patsy Schultz, Tax Assessor/Collector

Date: _____

Approved as to form:

Assistant County Attorney

Cc: GFBEDC

Recorded in the Minutes of the Fort Bend County Commissioners Court

Date of meeting: _____

Agenda Item: _____