

Exhibit A

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** ("**Agreement**") is entered into by and between the **CITY OF KELLER, TEXAS** (the "**City**"), a home rule municipal corporation organized under the laws of the State of Texas, and **BIRCH RACQUET & LAWN CLUB**, or its assigns (the "**Grantee**"). The City and Grantee are collectively referred to as the "**Parties**".

RECITALS

The City and Grantee hereby agree that the following statements are true and correct and constitute the basis upon which the City and Grantee have entered into this Agreement:

A. Grantee has contracted to acquire certain property located at 660 Keller Smithfield Rd. within the Daniel Bancroft Survey, Abstract No. 141, on 26.99 acres in the City, as more particularly described on Exhibit "A.1" attached hereto (the "The Birch ") and has plans to make Eligible Improvements on the The Birch. The Eligible Improvements will provide a valuable catalyst for development in the City and increased tax revenues to the City.

B. In order to maximize the economic benefits that the Eligible Improvements can bring to the City, the City and Grantee desire to enter into this Agreement.

C. In accordance with Resolution No.3349, adopted by the City Council on April 2, 2013, attached hereto as Exhibit "A.2" and hereby made a part of this Agreement for all purposes, the City has established an economic development incentive policy and program pursuant to which the City will, on a case-by-case basis, offer economic incentive packages authorized by Chapter 380 of the Texas Local Government Code, Article III, Section 52-a of the Texas Constitution, and other applicable laws, that the City Council determines will promote state or local economic development and stimulate business and commercial activity in the City (the "**380 Program**").

D. The City Council has determined that by entering into this Agreement, the potential economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City's economic development objectives and the 380 Program and that construction and continuous operation of the Eligible Improvements will further the goals for positive growth in the City. In addition, the City Council has determined that the 380 Program is an appropriate means to achieve the construction and operation of the Eligible Improvements, which the City Council has determined are necessary and desirable, and that the potential economic benefits that will accrue to the City pursuant the terms and conditions of this Agreement are consistent with the City's economic development objectives as outlined in the 380 Program. This Agreement is authorized by Chapter 380 of the Texas Local Government Code and the 380 Program.

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

AGREEMENT

1. INCORPORATION OF RECITALS.

The City Council has found at a duly-called and legally-noticed public meeting through the adoption of City Resolution No. 3361 attached hereto as Exhibit "A.3" and hereby made a part of this Agreement for all purposes, and the City and Grantee hereby agree, that the recitals set forth above are incorporated herein and are true and correct and form the basis upon which the Parties have entered into this Agreement.

2. DEFINITIONS.

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

380 Program has the meaning ascribed to it in Recital C.

Affiliate means all entities, incorporated or otherwise, under common control with, controlled by or controlling Grantee. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.

Agreement means this Economic Development Program Agreement, together with all exhibits and schedules attached to the Agreement from time to time, if any.

Base Value means the current taxable value of the The Birch property being \$112,061.

City means the City of Keller, Texas.

Completion Date means the date as of which the Eligible Improvements have been completed, which shall be no later than, December 31, 2018.

Construction Costs means construction costs directly expended by Grantee for the Eligible Improvements.

Date of Opening means the first full calendar month after the first day the business opens to the public, which shall be no later than, January 30, 2019.

Director means the representative of the City's Economic Development Department.

Effective Date has the meaning ascribed to it in Section 3.

Eligible Improvements means construction and operation of a tennis country club with a minimum 40,000 square foot building to include a 7,200 square foot clubhouse a fitness center, a bistro, offices and a reception area; with at least ten outdoor courts, fencing and shading and at least five indoor courts and includes only the increase in taxable value of the The Birch for the tax year beginning on January 1 of the year following the Completion Date in excess of the Base

Value. Eligible Improvements does not include any future detached retail operations on the property.

Event of Default means any of the Events of Default defined herein.

Infrastructure Improvements means the construction of a drainage improvements and a sanitary sewer line. The sanitary sewer line shall be constructed from Keller Smithfield Rd. to the western part of the property and branching to serve the northwest and southwest structures on the property as displayed in Exhibit B. This sewer line would afford an opportunity for residential properties on the east side of Keller Smithfield Rd. to connect to municipal sanitary sewer.

Drainage improvements shall be constructed as displayed in Exhibit C .

Infrastructure Completion Date means the date as of which the Infrastructure Improvements have been constructed by the Grantee and the City has inspected and accepted the said Infrastructure Improvements, which shall be no later than, September 30, 2018.

Grantee means BIRCH RACQUET & LAWN CLUB, or its successors or assigns.

Program Grants means the economic development grants paid by the City to Grantee in accordance with this Agreement and as part of the 380 Program.

Real Property Taxable Value shall mean the total appraised value of the The Birch and any improvements as determined by the Tarrant County Appraisal District for the applicable tax year.

Real Personal Property Taxable Value shall mean the total appraised personal property of the Eligible Improvements as determined by the Tarrant County Appraisal District for the applicable tax year.

Local Sales and Use Tax shall mean the City's 1% local option portion, allocated to the City's general fund, that is received on all taxable sales occurred from the Eligible Improvements.

Sales Tax Revenues means a one percent (1%) available sales tax, such as that presently in effect pursuant to Texas Tax Code §§ 321.101(a) and 321.103 , as may be amended, resulting from sales taxes received by the City and collected by the Grantee on Sales transacted on the Eligible Improvements, and any improvements located thereon, specifically excluding the sale of alcoholic beverages. Notwithstanding anything to the contrary herein, in no event shall Sales Tax Revenues ever exceed a one percent (1%) sales tax imposed by the City, even if the City at any point in the future charges more than a one percent (1%) sales tax. If the City's sales tax rate is ever decreased to the extent that the City receives available sales tax revenues based on less than a one percent (1%) sales tax, then the meaning of Sales Tax Revenues shall automatically be adjusted to equal that lesser percentage. If the City's sales tax rate is ever decreased as provided in the preceding sentence and the City then subsequently adds a sales tax that increases such lower percentage and whose use is not controlled or regulated, in whole or in part, by another governmental entity or authority, then Sales Tax Revenues shall be computed to reflect that increased percentage up to a maximum aggregate of one percent (1%).

Term has the meaning ascribed to it in Section 3.

The Birch has the meaning ascribed to it in Recital A.

3. TERM.

This Agreement shall be effective as of the date of execution by the Parties (the “**Effective Date**”) and, unless terminated earlier in accordance with this Agreement, shall expire on the date as of which the City has paid all Program Grants required to be paid to Grantee (the “**Term**”).

4. OBLIGATIONS OF GRANTEE.

4.1. Completion Deadline Guidelines.

In accordance with the terms and conditions of this Agreement, by December 31, 2017, Grantee shall have obtained a building permit. Grantee shall obtain a certificate of occupancy on the Eligible Improvements by no later than the Completion Date. All guidelines for application must be made to be eligible for the Program Grant.

4.2. Minimum Real Property Taxable Value.

The Eligible Improvements shall create no less than \$4.7 million in Real Property Taxable Value for the tax year following the year of the Completion Date.

4.3. Real Property Taxable Value.

Grantee agrees not to institute, file or participate in any proceeding, action or litigation during the term of the Agreement, which, in whole or in part, seeks to lower the Real Property Taxable Value of the The Birch and Eligible Improvements below \$4.7 million.

5. CITY OBLIGATIONS.

5.1. Building Permit and Impact Fees.

The City will grant back all Fees for the Eligible Improvements excluding third party and pass-thru fees. The “**Fees**” include all Impact Fees, Building and Construction Fees, the Building Permit Fee, Plan Review Fee, Plumbing Fee, Mechanical Fee, Electrical Fee, Contractor Registration Fee, Public Works Inspection Fee, Fire Sprinkler Fee, Fire Alarm Fee, Kitchen Hood/Extinguishing System Fee, Irrigation Fee, Water and Irrigation Meter Fees, Sign Permit Fee, Final Plat Fee, Site Plan Fee and Certificate of Occupancy Fee. The Fees are to be determined (calculated) by the City of Keller Community Development Department. The City will also waive all Connection Fees, which shall exclude those for the City of Fort Worth.

Such grant of project Fees shall exclude those for the City of Fort Worth, TRA, and third party consultants hired to perform plan reviews. Funds shall be granted back within 45 days Project Completion Date. The total value of the grant in this Section 5.2 shall not exceed \$60,900.00.

5.2. New Property Tax Grant.

The City agrees to provide a grant to Grantee of the new City property taxes received by the City in excess of the Base Value that are attributed to the completed Eligible Improvements from legally available funds as follows:

Year 1 – 100% Real Estate Property Taxes

Year 2 – 90% Real Estate Property Taxes

Year 3 – 80% Real Estate Property Taxes

This grant will be made yearly for a term of 3 years, within forty-five (45) days of the receipt by the City of the payment of such real property taxes attributable to the Eligible Improvements for the applicable tax year, beginning with the tax year which begins on January 1, 2019, provided that no Event of Default then exists (beyond any applicable notice and cure periods) under the provisions of this Agreement.

5.3. Infrastructure Improvements.

The City agrees to reimburse the Grantee, an amount not to exceed \$274,000, for Infrastructure Improvements as shown on the “Site Plan” and described under Obligations of Grantee, in this document. The reimbursement shall be paid within forty-five (45) days of City approval and acceptance of said Improvements, provided that the improvements are on or before the Infrastructure Completion Date.

6. DEFAULT, TERMINATION AND FAILURE BY GRANTEE TO MEET VARIOUS DEADLINES AND COMMITMENTS.

6.1. Failure to Complete Eligible Improvements.

If Grantee fails to make the Eligible Improvements by the Completion Date, the City shall have the right to terminate this Agreement by providing written notice to Grantee without further obligation to Grantee hereunder.

6.2. Failure to Pay City Taxes.

An Event of Default shall occur under this Agreement if any legally-imposed City taxes owed on the The Birch by Grantee or an Affiliate or arising on account of Grantee or an Affiliate’s operations on the The Birch become delinquent and Grantee or the Affiliate does not either pay such taxes or follow the legal procedures for protest and/or contest of any such taxes. In this event, the City shall notify Grantee in writing and Grantee shall have sixty (60) calendar days to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Grantee and shall have all other rights and remedies that may be available to it under the law or in equity.

6.3. Violations of City Code, State or Federal Law.

An Event of Default shall occur under this Agreement if any written citation is issued to Grantee or an Affiliate due to the occurrence of a violation of a material provision of the City Code on the The Birch or on or within any improvements thereon (including, without limitation, any violation of the City's Building or Fire Codes and any other City Code violations related to the environmental condition of the The Birch ; the environmental condition of other land or waters which is attributable to operations on the The Birch ; or to matters concerning the public health, safety or welfare) and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation. In this event, the City shall notify Grantee in writing and Grantee shall have sixty (60) calendar days to cure such default. An Event of Default shall occur under this Agreement if the City is notified by a governmental agency or unit with appropriate jurisdiction that Grantee or an Affiliate, or any successor in interest thereto, any third party with access to the The Birch pursuant to the express or implied permission of Grantee or an Affiliate, or any a successor in interest thereto, or the City (on account of the Improvements or the act or omission of any party other than the City on or after the Effective Date of this Agreement) is in violation of any material state or federal law, rule or regulation on account of the The Birch , improvements on the The Birch or any operations thereon (including, without limitation, any violations related to the environmental condition of the The Birch ; the environmental condition of other land or waters which is attributable to operations on the The Birch ; or to matters concerning the public health, safety or welfare). Upon the occurrence of such default, the City shall notify Grantee in writing and Grantee shall have (i) thirty (30) calendar days to cure such default or (ii) if Grantee has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time that the City reasonably agrees is necessary to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Grantee and shall have all other rights and remedies that may be available to it under the law or in equity.

6.4. Knowing Employment of Undocumented Workers.

Grantee acknowledges that effective September 1, 2007, the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. Grantee *hereby certifies that Grantee, and any branches, divisions, or departments of Grantee, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Grantee, or any branch, division, or department of Grantee, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens):*

- *if such conviction occurs during the Term of this Agreement, this Agreement shall terminate contemporaneously upon such conviction (subject to any appellate rights that may lawfully be available to and*

exercised by Grantee) and Grantee shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Program Grants received by Grantee hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum; or

- if such conviction occurs after expiration or termination of this Agreement, subject to any appellate rights that may lawfully be available to and exercised by Grantee, Grantee shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Program Grants received by Grantee hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.*

For the purposes of Section 6.5, “**Simple Interest**” is defined as a rate of interest applied to the aggregate amount of the Program Grants. This Section 6.4 does not apply to convictions of any subsidiary or Affiliate entity of Grantee, by any franchisees of Grantee, or by a person or entity with whom Grantee contracts. Notwithstanding anything to the contrary herein, this Section 6.5 shall survive the expiration or termination of this Agreement.

6.5. General Breach.

Unless stated elsewhere in this Agreement, Grantee shall be in default under this Agreement if Grantee breaches any term or condition of this Agreement beyond any applicable notice and/or cure periods. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the City referencing this Agreement (or, if Grantee has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith), the City shall have the right to terminate this Agreement immediately by providing written notice to Grantee.

7. NO INDEPENDENT CONTRACTOR OR AGENCY RELATIONSHIP.

It is expressly understood and agreed that Grantee shall not operate as an independent contractor or as an agent, representative or employee of the City. Grantee shall have the exclusive right to control all details and day-to-day operations relative to the Eligible Improvements, The Birch and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees in connection therewith. Grantee acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Grantee, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Grantee further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Grantee.

8. INDEMNIFICATION.

GRANTEE, AT NO COST TO THE CITY, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO GRANTEE'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) GRANTEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT; OR (ii) ANY ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF GRANTEE, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY, OR ITS EMPLOYEES, OFFICERS, AGENTS, ASSOCIATES, CONTRACTORS OR SUBCONTRACTS), OR SUBCONTRACTORS DUE OR RELATED TO OR ARISING FROM THE ELIGIBLE IMPROVEMENTS AND ANY OPERATIONS AND ACTIVITIES ON THE THE BIRCH OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.

9. NOTICES.

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

City:

City of Keller
Attn: City Manager
P.O. Box 770
Keller, Texas 76244

Grantee:

Birch Racquet & Lawn Club
Attn: Dent Tennis Academy
PO Box 80229
Keller, Texas 76248

With Copies to (which shall not constitute notice):

Boyle & Lowry, L.L.P.
Attn: L. Stanton Lowry
4201 Wingren Dr., Suite 108
Irving, Texas 75062

10. ASSIGNMENT AND SUCCESSORS.

Grantee may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement to an Affiliate without the approval of the City so long as Grantee, the Affiliate and the City, which approval shall not be unreasonably withheld or denied, first execute an agreement under which the Affiliate agrees to assume and be bound by all covenants and obligations of Grantee under this Agreement. Grantee may also assign its rights and obligations under this agreement to a financial institution or other lender for purposes of granting a security interest in the Eligible Improvements and/or The Birch , provided that such financial institution or other lender first executes a written agreement with the City governing the

rights and obligations of the City, Grantee and the financial institution or other lender with respect to such security interest. Otherwise, Grantee may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of the City Council which consent shall not be unreasonably withheld, conditioned or delayed, so long as (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Grantee under this Agreement. Any attempted assignment without the City Council's prior consent shall constitute a breach and be grounds for termination of this Agreement following receipt of written notice from the City to Grantee. Any lawful assignee or successor in interest of Grantee of all rights under this Agreement shall be deemed "Grantee" for all purposes under this Agreement.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter, codes, and ordinances, as amended. The Eligible Improvements shall be consistent with all City codes, ordinances, rules and regulations of the City. This Agreement shall not constitute a waiver by the City of any codes, ordinances, rules and regulations. Further, Grantee acknowledges that by executing this Agreement, no entitlement or agreements concerning zoning or land use shall arise, either implied or otherwise.

12. GOVERNMENTAL POWERS.

It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities that are outside of the terms, obligations, and conditions of this Agreement.

13. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

14. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

15. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and Grantee, and any lawful assign or successor of Grantee, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

16. FORCE MAJEURE.

It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, 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 Grantee's failure to obtain adequate financing to complete the Eligible Improvements by the Completion Deadline shall not be deemed to be an event of force majeure and that this Section 16 shall not operate to extend the Completion Deadline in such an event.

17. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

18. SEVERABILITY CLAUSE.

It is hereby declared to be the intention of the Parties that sections, paragraphs, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared unconstitutional or illegal by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Agreement since the same would have been executed by the Parties without the incorporation in this Agreement of any such unconstitutional phrase, clause, sentence, paragraph or section. It is the intent of the Parties to provide the economic incentives contained in this Agreement by all lawful means.

19. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Grantee, and any lawful assign and successor of Grantee, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

21. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the last date indicated below:

CITY OF KELLER:

GRANTEE:

BIRCH RACQUET & LAWN CLUB

By: _____
Mark Hafner
City Manager

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
L. Stanton Lowry
City Attorney

