

NOTICES RELATING TO JULY 28, 2014 ORDER APPROVING  
TRIANGLE BRICK COMPANY  
TAX ABATEMENT AGREEMENT

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July 18, 2014

*Via Certified Mail, Return Receipt Requested*

Mr. Mark Hanson,  
President of the Board of Trustees  
Bellevue Independent School District  
P.O. Box 38  
Bellevue, Texas 76228

Re: Tax Abatement Agreement between Clay County and  
Triangle Brick Company

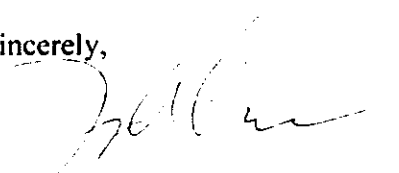
Dear Mr. Hanson:

This letter is to provide you with notice that the Commissioners Court of Clay County, Texas will consider, and act upon, a proposed Tax Abatement Agreement with Triangle Brick Company at a regular meeting of the Commissioners Court at 10:00 a.m. on Monday, July 28, 2014. The meeting will be held in the Commissioners Courtroom in the Clay County Annex Building, 214 N. Main Street, Henrietta, Texas.

I am enclosing a copy of the proposed Tax Abatement Agreement. This letter is being sent to you as the representative of the Bellevue Independent School District as required by Chapter 312 of the Texas Tax Code.

If you have any questions on this matter, please do not hesitate to contact me.

Sincerely,

  
Jay A. Cantrell

Enclosure – copy of proposed Tax Abatement Agreement

**TAX ABATEMENT AGREEMENT**  
**Between**  
**CLAY COUNTY, TEXAS and TRIANGLE BRICK COMPANY**  
(Within the Southeast Clay County Reinvestment Zone)

This Tax Abatement Agreement (this "Agreement") is entered into by and between Clay County, Texas (the "County") duly acting herein by and through its County Judge, and Triangle Brick Company, a North Carolina corporation duly authorized to do business in the State of Texas ("Owner") effective July \_\_\_\_, 2014 and is as follows:

Recitals:

A. On May 10, 2010, the Commissioners Court of Clay County, Texas (the "Commissioners Court") adopted a resolution stating that the County had elected to become eligible to participate in tax abatements pursuant to the *Texas Property Redevelopment and Tax Abatement Act*, as amended (herein referred to as the "Act"), being Chapter 312 of the Texas Tax Code, and on that same date adopted guidelines and criteria governing tax abatement agreements entered into by the County (hereinafter referred to as the "Guidelines"); which Guidelines were renewed and extended by the Commissioners Court on July 8, 2013.

B. On the July 7, 2014, the Commissioners Court conducted a public hearing on the advisability of designating a reinvestment zone which is eligible for property tax abatement as authorized by the Act and the Guidelines, which public hearing was preceded by: (i) notice published on June 26, 2014 (more than 7 days prior to the date of the public hearing) in the Clay County Leader, a newspaper of general circulation within Clay County, Texas, (ii) notice provided more than 7 days prior to the public hearing to the presiding officers, respectively, of the Henrietta Independent School District and the Bellevue Independent School District, those entities being the only other taxing units located within the proposed Reinvestment Zone and (iii) notice posted in accordance with Chapter 551 of the Texas Government Code (the Open Meetings Act) and following the conclusion of the public hearing on July 7, 2014, the Commissioners Court adopted an *Order Designating the Southeast Clay County Reinvestment Zone*, a true copy of which is attached hereto, marked as Exhibit A and incorporated herein for all purposes, designating the following lands owned by Owner and located in Clay County, Texas (the "Lands") as the Southeast Clay County Reinvestment Zone (herein, the "Reinvestment Zone"), to-wit:

Tract 1: A 994.84 ACRE TRACT BEING ALL OR PART OF THE FOLLOWING SURVEYS SITUATED IN CLAY COUNTY, TEXAS;  
THE YARBOROUGH & STONE SURVEY, ABSTRACT NO. 1101, THE J. ELSEFFER SURVEY, ABSTRACT NO. 1019, THE A. YARBOROUGH SURVEY, ABSTRACT NO. 947, THE F. BISHOP SURVEY, ABSTRACT NO. 783, THE I. & G. N. RAILROAD COMPANY SURVEY, ABSTRACT NO. 262, THE R. SUNAGAS SURVEY, ABSTRACT NO. 408, THE L. BEARDEN SURVEY, ABSTRACT NO. 844, THE L. P. HAPGOOD SURVEY, ABSTRACT NO. 1140, THE E.B. CARVER SURVEY NO. 1, ABSTRACT NO. 999 AND THE E. B. CARVER SURVEY NO.2, ABSTRACT NO. 1000, BEING A PART OF THAT CERTAIN TRACT DEEDED TO TERRILL J. & SAMMIE N. HORTON FROM RANDY HAPGOOD IN JANUARY, 2006, AS

RECORDED IN VOLUME 496, PAGE 304, CLAY COUNTY DEED RECORDS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A ½ INCH IRON ROD FOUND BEING THE NORTHWEST CORNER OF THE T. & N.O. RAILROAD COMPANY SURVEY NO.3, ABSTRACT NO. 670, CLAY COUNTY, TEXAS, BEING AN INTERIOR CORNER OF SAID E. B. CARVER SURVEY NO. 2, BEING AN ANGLE POINT ON THE CENTERLINE OF SCALING RANCH ROAD, A COUNTY ROAD, AND BEING AN INTERIOR CORNER OF SAID HORTON TRACT FOR AN INTERIOR CORNER AND PLACE OF BEGINNING OF THIS TRACT;

THENCE SOUTH 00°0'13" EAST, PASSING THE SOUTH LINE OF SAID CARVER SURVEY NO.2 AND THE NORTH LINE OF SAID CARVER SURVEY NO.1, A DISTANCE OF 876.76 FEET ALONG THE WEST LINE OF SAID T. & N.O. RR. CO. SURVEY, THE CENTERLINE OF SAID SCALING RANCH ROAD AND THE EAST LINES OF SAID CARVER SURVEYS AND SAID HORTON TRACT TO A ½ INCH IRON ROD FOUND BEING THE POINT OF INTERSECTION OF THE WEST LINE OF SAID T. & N. O. RR. CO. SURVEY, THE CENTERLINE OF SAID SCALING RANCH ROAD, AND THE EAST LINE OF SAID CARVER SURVEY NO. 2 WITH THE NORTHEAST RIGHT-OF-WAY LINE OF A 100 FOOT WIDE BURLINGTON NORTHERN SANTA FE RAILROAD COMPANY RIGHT-OF-WAY, SAID IRON ROD ALSO BEING THE MOST SOUTHERLY SOUTHWEST CORNER OF SAID HORTON TRACT FOR THE MOST SOUTHERLY SOUTHEAST CORNER OF THIS TRACT;

THENCE LEAVING THE WEST LINE OF SAID T. & N. O. RR. CO. SURVEY AND THE EAST LINE OF SAID CARVER SURVEY NO.1, NORTH 36°21'40" WEST, PASSING THE NORTH LINE OF SAID CARVER SURVEY NO. 1 AND THE SOUTH LINE OF SAID CARVER SURVEY NO. 2 AND PASSING THE NORTH LINE OF SAID CARVER SURVEY NO. 2 AND THE SOUTH LINE OF SAID R. SUNAGAS SURVEY, ABSTRACT NO. 408, 4,912.07 FEET ALONG THE SOUTHWEST LINE OF SAID HORTON TRACT AND THE NORTHEAST RIGHT-OF-WAY LINE OF SAID BNSF RAILROAD COMPANY RIGHT-OF-WAY TO A ½ INCH IRON ROD SET BEING A POINT OF CURVATURE ON THE SOUTHWEST LINE OF SAID HORTON TRACT AND THE NORTHEAST RIGHT-OF-WAY LINE OF SAID RAILROAD RIGHT-OF-WAY FOR A POINT OF CURVATURE ON THE SOUTHWEST LINE OF THIS TRACT;

THENCE IN A NORTHWESTERLY DIRECTION ALONG THE SOUTHWEST LINE OF SAID HORTON TRACT, ALONG THE NORTHEAST RIGHT-OF-WAY LINE OF SAID BNSF RAILROAD COMPANY RIGHT-OF-WAY, AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 6,400.00 FEET, AN ARC LENGTH OF 1,401.35 FEET, AND WHOSE CHORD BEARS NORTH 30°05'18" WEST 1398.55 FEET TO A ½ INCH IRON ROD SET BEING A POINT OF TANGENCY ON THE SOUTHWEST LINE OF SAID HORTON TRACT AND THE NORTHEAST RIGHT- OF-WAY LINE OF SAID RAILROAD RIGHT-OF-WAY LINE OF SAID RAILROAD RIGHT-OF-WAY FOR A POINT OF TANGENCY ON THE SOUTHWEST LINE OF THIS TRACT;

THENCE NORTH 23°48'58" WEST, PASSING THE NORTH LINE OF SAID SUNAGAS SURVEY AND THE SOUTH LINE OF SAID F. BISHOP SURVEY,

ABSTRACT NO. 783, AND PASSING THE NORTH LINE OF SAID BISHOP SURVEY AND THE SOUTH LINE OF SAID YARBROUGH & STONE SURVEY, ABSTRACT NO. 1101 A DISTANCE OF 6,758.93 FEET ALONG THE SOUTHWEST LINE OF SAID HORTON TRACT AND THE NORTHEAST RIGHT-OF-WAY LINE OF SAID BNSF RAILROAD COMPANY RIGHT-OF-WAY TO A ½ INCH IRON ROD FOUND BEING THE POINT OF INTERSECTION OF THE NORTH LINE OF SAID YARBROUGH & STONE SURVEY, THE CENTERLINE OF HAPGOOD ROAD, A COUNTY ROAD, AND THE SOUTH LINE OF THE T. & N. O. RAILROAD COMPANY SURVEY NO. 7, ABSTRACT NO. 679, WITH THE NORTHEAST RIGHT-OF-WAY LINE OF SAID RAILROAD RIGHT-OF-WAY, AND BEING A POINT WHERE THE NORTHWEST BOUND RAILROAD RIGHT-OF-WAY WIDENS TO 150 FEET WIDE, SAID IRON ROD BEING A NORTHWEST CORNER OF SAID HORTON TRACT FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 89°49'09" EAST, PASSING THE EAST LINE OF SAID YARBROUGH & STONE SURVEY AND THE WEST LINE OF SAID J. ELSEFFER SURVEY, ABSTRACT NO. 1019, A DISTANCE OF 2,280.47 FEET ALONG THE NORTH LINE OF SAID HORTON TRACT AND SAID YARBROUGH & STONE AND ELSEFFER SURVEYS, ALONG THE CENTERLINE OF SAID HAPGOOD ROAD, AND ALONG THE SOUTH LINE OF SAID T. & N. O. RR. CO. SURVEY NO. 7 TO A ½ INCH IRON ROD SET FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE LEAVING THE NORTH LINE OF SAID HORTON TRACT AND SAID YARBROUGH & STONE AND ELSEFFER SURVEYS, THE CENTERLINE OF SAID HAPGOOD ROAD AND THE SOUTH LINE OF SAID T. & N. O. RR. CO. SURVEY NO. 7, SOUTH 00°12'09" EAST 627.26 FEET TO A ½ INCH IRON ROD FOUND FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE SOUTH 54°39'31" EAST 1,455.90 FEET TO A ½ INCH IRON ROD SET IN A FENCELINE ALONG THE WEST SIDE OF A CULTIVATED FIELD FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE SOUTH 00°16'27" WEST 1,082.43 FEET ALONG A FENCELINE ON THE WEST SIDE OF SAID FIELD TO A FENCE CORNER POST ON THE SOUTH LINE OF SAID ELSEFFER SURVEY AND THE NORTH LINE OF SAID F. BISHOP SURVEY BEING THE SOUTHWEST CORNER OF SAID CULTIVATED FIELD FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE NORTH 89°40'56" EAST 544.60 FEET ALONG THE SOUTH LINE OF SAID ELSEFFER SURVEY AND SAID CULTIVATED FIELD AND ALONG THE NORTH LINE OF SAID BISHOP SURVEY TO A FENCE CORNER POST BEING THE SOUTHEAST CORNER OF SAID ELSEFFER SURVEY AND SAID FIELD AND AN ANGLE POINT ON THE WEST LINE OF SAID A. YARBROUGH SURVEY, ABSTRACT NO 947, FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE LEAVING THE NORTH LINE OF SAID BISHOP SURVEY, NORTH 00°16'34" EAST 1,077.54 FEET ALONG THE EAST LINE OF SAID ELSEFFER SURVEY AND SAID CULTIVATED FIELD AND ALONG THE WEST LINE OF SAID A. YARBROUGH SURVEY TO A ½ INCH IRON ROD FOUND FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE LEAVING THE EAST LINE OF SAID ELSEFFER SURVEY AND SAID CULTIVATED FIELD AND THE WEST LINE OF SAID A. YARBROUGH SURVEY, EAST, PASSING THE EAST LINE OF SAID A. YARBROUGH SURVEY AND THE WEST LINE OF SAID I. & G. N. RR. CO. SURVEY, ABSTRACT 262, A DISTANCE OF 3,303.60 FEET TO A ½ INCH IRON ROD ON THE EAST LINE OF SAID I. & G. N. RR. CO SURVEY AND THE WEST LINE OF THE MARION COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 308, FOR THE NORTHEAST CORNER OF THIS TRACT.

THENCE SOUTH 00°25'10" EAST 4,900.46 FEET ALONG THE EAST LINE OF SAID I & G. N. RR. CO. SURVEY AND THE WEST LINE OF SAID MARION COUNTY SCHOOL LAND SURVEY TO A ½ INCH IRON ROD FOUND LYING NORTH 00°25'10" WEST 60.00 FEET FROM THE SOUTHWEST CORNER OF SAID MARION COUNTY SCHOOL LAND SURVEY AND AN INTERIOR CORNER OF SAID I. & G. N. RR. CO. SURVEY FOR AN ANGLE POINT ON THE EAST LINE OF THIS TRACT; THENCE LEAVING THE EAST LINE OF SAID I. & G. N. RR. CO. SURVEY AND THE WEST LINE OF SAID MARION COUNTY SCHOOL LAND SURVEY, SOUTH 89°57'18" WEST 59.98 FEET TO A ½ INCH IRON ROD FOUND FOR AN ANGLE POINT ON THE EAST LINE OF THIS TRACT;

THENCE SOUTH 00°24'13" EAST PASSING THE SOUTH LINE OF SAID I. & G. N. RR. CO. SURVEY AND THE NORTH LINE OF SAID L. P. HAPGOOD SURVEY, ABSTRACT NO. 1140, AND PASSING THE SOUTH LINE OF SAID HAPGOOD SURVEY AND THE NORTH LINE OF SAID CARVER SURVEY NO. 2, A DISTANCE OF 4,094.77 FEET TO A 1/2 INCH IRON ROD ON THE SOUTH LINE OF SAID CARVER SURVEY NO. 2 AND SAID HORTON TRACT, THE CENTERLINE OF SAID SCALING RANCH ROAD, AND THE NORTH LINE OF SAID T. & N. O. RR. CO. SURVEY, ABSTRACT NO. 670, SAID IRON ROD LYING SOUTH 89°13'29" WEST 60.00 FEET FROM THE SOUTHEAST CORNER OF SAID CARVER SURVEY NO. 2 AND A SOUTHEAST CORNER OF SAID HORTON TRACT, THE SOUTHWEST CORNER OF SAID I. & G. N. RR. CO. SURVEY, FOR THE MOST EASTERLY SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 89°13'29" WEST 980.96 FEET ALONG THE SOUTH LINE OF SAID CARVER SURVEY NO. 2 AND SAID HORTON TRACT, ALONG THE CENTERLINE OF SAID SCALING RANCH ROAD, AND ALONG THE NORTH LINE OF SAID T. & N. O. RR. CO. SURVEY TO THE PLACE OF BEGINNING, AND CONTAINING 994.84 ACRES, MORE OR LESS.

Tract 2: A 1.245 ACRE TRACT OUT OF THE T. & N.O. RR. CO. SURVEY NO. 7, ABSTRACT NO. 679, CLAY COUNTY, TEXAS; BEING PART OF A CERTAIN 795.96 ACRES TRACT DESCRIBED IN VOLUME 396, PAGE 592 OF THE DEED RECORDS OF CLAY COUNTY, TEXAS; AND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2" IRON ROD AT THE INTERSECTION OF THE SOUTH LINE OF SAID T. & N.O. RR. CO. SURVEY NO.7 AND THE EAST RIGHT OF WAY LINE OF THE F.W. & D.C. RR. AND IN THE CENTER OF EAST HAPGOOD DRIVE (PAVED) AND AT THE NORTHWEST CORNER OF A CERTAIN 994.82 ACRES TRACT FOR THE SOUTHWEST AND BEGINNING CORNER OF THIS

EASEMENT.

THENCE N. 26 DEG. 22 MIN. 47 SEC. W. 26.71 FEET ALONG THE EAST RIGHT OF WAY LINE OF SAID F.W. & D.C. RR . TO A POINT FOR THE NORTHWEST CORNER OF THIS EASEMENT.

THENCE N. 89 DEG. 49 MIN. 58 SEC. E. 2292.25 FEET ALONG THE NORTH RIGHT OF WAY FENCE OF SAID EAST HAPGOOD DRIVE TO A POINT FOR THE NORTHEAST CORNER OF THIS EASEMENT.

THENCE S. 00 DEG. 12 MIN. 09 SEC. E. 23.46 FEET TO A FOUND CAPPED 1/2" IRON ROD IN SAID EAST HAPGOOD DRIVE AND AT THE MOST NORTHERLY NORTHEAST CORNER OF SAID 994.82 ACRES TRACT AND AT A CORNER OF A CERTAIN 4292.742 ACRES TRACT (TRACT 1) DESCRIBED IN VOLUME 4, PAGE 118 OF THE OFFICIAL PUBLIC RECORDS OF CLAY COUNTY, TEXAS, FOR THE SOUTHEAST CORNER OF THIS EASEMENT.

THENCE S. 89 DEG. 49 MIN. 13 SEC. W. 2280.47 FEET ALONG SAID EAST HAPGOOD DRIVE TO THE PLACE OF BEGINNING

C. Owner has proposed certain improvements to be located on the Lands and within the Reinvestment Zone, generally described as a clay mining and brick manufacturing facility and related improvements and transportation facilities (which improvements are more particularly described and defined in Section 1.1 and are hereinafter collectively referred to as the "Improvements").

D. The Commissioners Court has concluded that the Improvements and operations proposed by Owner within the Reinvestment Zone and described in this Agreement and the terms of this Agreement: (i) are consistent with the requirements of the Act and the Guidelines or, to the extent of any inconsistency with the Guidelines, the Commissioners Court has determined, in its discretion and in accordance with TEX. TAX CODE §312.002(d), that this Agreement should be entered into notwithstanding any such inconsistency, and (ii) constitute a major investment in the Reinvestment Zone that will be a benefit to the Reinvestment Zone and will contribute to the economic development of the County.

E. Notice of the County's intent to enter into this Agreement has been provided to the presiding officers of the Henrietta Independent School District and the Bellevue Independent School District; those being the only other governmental entities levying taxes within the area encompassed by the Lands.

F. This Agreement was adopted at a regularly scheduled meeting of the Commissioners Court which was preceded by written notice which was properly posted in accordance with the Open Meetings Act and at which a quorum of the Commissioners Court was present.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the parties do hereby agree as follows:

**ARTICLE 1.  
IMPROVEMENTS**

1.1. Improvements in Reinvestment Zone. Owner agrees to construct the Improvements within the Reinvestment Zone in accordance with this Agreement. As used in this Agreement, the term "Improvements" shall mean and refer to a clay mining and brick manufacturing facility and related improvements and transportation facilities for the manufacture of brick which are more particularly described in Exhibit B which is attached hereto and incorporated herein for all purposes. The kind, number and location of all contemplated Improvements are described in Exhibit B.

1.2. Timing of Improvements. Owner projects that construction of Improvements will begin December 5<sup>th</sup>, 2014 and will be substantially completed by April 30<sup>th</sup>, 2016. If Owner has not substantially completed construction of the Improvements by December 31, 2017, County may terminate this Agreement.

1.3. Plans and Specifications, Governmental Requirements and Workmanship. All Improvements shall be constructed and installed in accordance with plans and specifications prepared by an engineer or architect licensed within one of the states of the United States of America and in accordance with all regulations of any governmental agency or entity having jurisdiction over any aspect of the construction. Owner shall take such steps as are reasonably necessary to see that all work on the Improvements is completed in a good and workmanlike manner.

1.4 The base year (as of January 1, 2014) value for the proposed Improvements is zero.

**ARTICLE 2.  
TAX ABATEMENT**

2.1. Tax Abatement Granted. Subject to the terms and conditions of this Agreement, the County agrees to abate, for each year during the Abatement Period defined in Section 2.3 below, the property tax levied by the County on that portion or percentage of the value of the Eligible Property (hereinafter defined) set forth by each year during the Abatement Period pursuant to the following chart:

<u>Year</u>	Percentage of Value of Eligible Property Subject to Abatement
1	
2	
3	
4	
5	
6	
7	



2.2. Eligible Property. The property eligible for tax abatement under this Agreement (the "Eligible Property") shall be the Improvements described in Exhibit B and all tangible personal property located on the Lands during the Abatement Period. Notwithstanding the foregoing, only property located within the Reinvestment Zone which is eligible for tax abatement pursuant to Chapter 312 of the Texas Tax Code and meets the definition of an improvement as provided in Chapter 1 of the Texas Tax Code shall be eligible for tax abatement under this Agreement and included within the definition of "Improvements" pursuant to this Agreement. The value of the Lands and all taxable property, including improvements, located on the Lands which are put in place after this Agreement is executed but prior to the Commencement Date (as defined in Section 2.3 below) shall be subject to property taxation without abatement in accordance with the Texas Tax Code.

2.3. Abatement Period; Term of Agreement. Subject to the limitations set forth in Section 1.2 above, Owner may elect to begin the Abatement Period on either January 1, 2016 or January 1, 2017 by written notice to the County Judge of such election prior to the date elected by Owner. The date elected by Owner to begin the Abatement Period is hereinafter referred to as the "Commencement Date". The Abatement Period will terminate on December 31 of the seventh (7<sup>th</sup>) year following the Commencement Date, unless sooner terminated in accordance with the terms of this Agreement. Termination of this Agreement shall not relieve either party of any covenants, obligations or payments owing to the other as of the date the Agreement is terminated.

2.4. Conditions to Tax Abatement. The tax abatement granted by this Agreement is expressly conditioned upon the following conditions which must be satisfied throughout the entire term of this Agreement and with which Owner agrees to comply with at all times, subject, however, to the notice and cure rights of Owner set forth in Article 5 hereof:

(a) Construction of the Improvements. Owner's timely construction of the Improvements in accordance with this Agreement.

(b) Operations. Owner's operation of the Facilities in accordance with this Agreement, including those provisions requiring commercial viability. As used in this Agreement the term "Facilities" shall mean the Improvements and all other tangible property or fixtures used by Owner in connection with its operations on the Lands and shall include any property added to the Improvements because of repairs, retrofitting or additional improvements during the term of this Agreement which are not the result of a casualty loss.

(c) Compliance with this Agreement. Owner's compliance with all covenants and obligations undertaken by Owner pursuant to the terms of this Agreement.

(d) Accuracy of Representations. The accuracy and truthfulness of the representations by Owner contained in this Agreement as of the date this Agreement is executed and throughout the term of this Agreement.

(e) Payment of Taxes. The payment by Owner and all affiliates and subsidiaries of Owner, prior to delinquency, of all taxes levied by the County, any other taxing unit within the County, the State of Texas or the United States of America, that are related to the Facilities. It

shall not be a violation of this provision if the party who is assessed the tax in good faith protests the levy or assessment of a particular tax by the timely filing of appropriate proceedings to prosecute a protest or contest of the tax, makes payment of the disputed tax during such protest or contest as required by applicable law and pays the tax, as finally determined, prior to delinquency as required by applicable law.

(f) Payment of Debts, Obligations. The parties agree that the following shall be an event of default under Article 5 of this Agreement:

(1) The entry of a final, non-appealable judgment against Owner for money owed;

(2) The filing of a mechanic's or materialmen's lien against the Improvements or the Facilities which is not contested by Owner within 90 days of the date of its filing; or

(3) The filing, by Owner, of a petition for relief under Title 11 of the United States Code.

(g) Continued Operations following Abatement. Owner agrees to continue operation of the Facilities in a commercially viable manner (as defined in Section 3.4 below) for a period of seven (7) years after the end of the Abatement Period.

**ARTICLE 3.  
COVENANTS APPLICABLE TO CONSTRUCTION  
AND OPERATIONS AFTER CONSTRUCTION**

3.1. Job Creation. Owner agrees to create, and maintain, not fewer than 38 new full time jobs in connection with the construction of the Improvements and operation of the Facilities either through direct employment by Owner or through employment by contractors or service providers engaged to provide goods or services in connection with the construction of the Improvements and thereafter in the course of operating the Facilities.

3.2. Safe Operations; Compliance with Governmental Requirements, Permits. Owner agrees to operate the Facilities in a reasonable, prudent and safe manner and in compliance with all rules and regulations of any governmental entity having jurisdiction of its operations and in accordance with any permits issued by any governmental agency or entity with respect to its operations. Owner shall not be in violation of this covenant if Owner remedies or properly addresses any violation, or alleged violation, of a governmental rule or regulation within the time period required by the governmental agency having jurisdiction of such matter.

3.3. Commercial Viability of Operations. After construction of the Improvements is completed and throughout the term of this Agreement the Facilities shall be operated and used in a manner that insures it commercial viability and in a manner consistent with the County's generally purpose of encouraging development of the Reinvestment Zone.

3.4. Local Spending. Owner agrees it will use commercially reasonable efforts to give preference to contractors and vendors located in the County in the construction of the Improvements and the operation and maintenance of the Facilities provided that Owner will not be required to use goods and services provided by local contractors or vendors where such local goods or services are not comparable to those provided by nonresidents or where such goods and services are not available on terms and conditions (including price and bonding capacity) comparable to those offered by nonresidents. Additionally, Owner agrees to do the following:

(2) Not later than one month prior to filling a full time position (excepting internal transfer and promotions) for the operation of the Facilities, Owner shall publish notice of the position in the *Clay County Leader* describing the position and the procedure for application. Any position requiring more than 35 hours per week shall be considered full time.

3.5. Annual Certification. On or before January 31 of each calendar year that this Agreement is in effect Owner shall certify to the County its compliance with all provisions of this Agreement. The annual certification shall contain a statement, sworn to by an authorized officer of Owner, stating that Owner is in compliance with each applicable term of this Agreement.

3.6. Determination of Value. The Chief Appraiser of the Appraisal District shall annually determine the Certified Appraised Value of all real and personal property making up the Facilities without regard to the abatement granted by this Agreement in accordance with applicable law and the Certified Appraised Value of such property after applying the abatement granted this Agreement. The Chief Appraiser shall then record both values in the appraisal records. The value of the Facilities without regard to the abatement shall be used to compute the amount of abated taxes that are required to be recaptured and paid to the County in the event recapture of such taxes is required by this Agreement or applicable law. During the term of this Agreement, Owner shall each year furnish the Chief Appraiser of the Appraisal District with such information as is required by applicable law (including Chapter 22 of the Texas Tax Code) and as may be necessary for the administration of the abatement specified in this Agreement. The Appraisal District will determine the values required herein in any manner permitted by applicable law, but without limitation of Owner's rights in Section 3.7 hereinbelow. As used in this Agreement, the term "Certified Appraised Value" shall mean the appraised value of property that is subject to property taxation under the Texas Tax Code determined and certified by the Chief Appraiser of the Clay County Central Appraisal District for each taxable year.

3.7. Owner's Right of Protest. Nothing in this Agreement shall limit Owner's right to protest and contest any appraisal or assessment of the Facilities in accordance with applicable law. The abatement to which Owner is entitled will be governed by the values finally determined in proceedings relative to any such protest or contest by Owner.

3.8. Estoppel Certificates. Either party hereto may request an estoppel certificate from the other party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate shall certify, as of the date of the certificate: (i) that this Agreement is in full force and effect without default if such is the case, (ii) the remaining term of this Agreement, and (iii) such other matters as may be agreed upon by the parties.

3.9. **Damage or Destruction of Improvements.** If the Improvements, or any portion thereof, are destroyed or damaged by fire, windstorm or other causes, regardless of whether such causes are based upon an act or omission of Owner or an agent, employee or officer of Owner, Owner shall replace or repair the damaged or destroyed item(s) to the extent required to maintain the commercial viability of its operations at the Facilities.

#### **ARTICLE 4. REPRESENTATIONS**

4.1. **By the County:** The County hereby warrants and represents to Owner:

(1) That none of the tracts on which the Improvements or the Facilities are located are owned or leased by any member of the Commissioners Court.

(2) That this Agreement was authorized by an order of the Commissioners Court adopted at its meeting on the date first set forth above, authorizing the County Judge to execute this Agreement on behalf of the County.

4.2. **By Owner.** Owner hereby warrants and represents to the County:

(1) That Owner is a Corporation organized under the laws of the State of North Carolina and is in good standing with, and authorized to conduct business within, the State of Texas.

(2) That Owner is not in default in the payment of any taxes owing to the federal, state or any local governmental units.

(3) That the officers of Owner signing this Agreement are properly authorized to enter into this Agreement and bind Owner to the terms thereof and Owner is thereby authorized to perform all covenants undertaken by Owner pursuant to this Agreement.

(4) That there is no operating agreement, certificate of formation provision, or agreement between Owner and any third party which in any way limits Owner's authority to enter into this Agreement and perform all covenants and agreements set forth herein.

#### **ARTICLE 5. DEFAULT; REMEDIES**

5.1. **Default In Constructing Improvements.** If Owner fails to complete the Improvements in the manner, and within the time period, stated in this Agreement, and Owner's failure to comply with those provisions of this Agreement are not cured following notice to Owner pursuant to Section 5.3 below, Owner shall be in default under the terms of this Agreement. In the event of a default in the construction of the Improvements the County may terminate or cancel this Agreement and Owner shall pay to the County all property tax revenues (including penalties, interest, attorney's fees and costs) that would have been payable to the County in the absence of this Agreement.

5.2. Default In Operations, Payments or Performance of Other Covenants. The occurrence of any of the following circumstances shall be an event of default under the terms of this Agreement:

- (1) Owner fails to timely pay any property taxes owing to County; or
- (2) Owner fails to timely perform any covenant, condition or agreement it has undertaken pursuant to the terms of this Agreement; or
- (3) Any representation made by Owner in Section 4.2 of this Agreement is untrue or, with the passage of time, becomes materially untrue.

5.3. Notice, Right to Cure. Upon the occurrence of an event of default (including default under Sections 5.1 or 5.2 above), the County shall give the Owner written notice specifying the default. Owner shall cure such default within 60 days of the date of the notice of default by the County. This cure period shall be extended for the period of time referred to in Section 8.6 of this Agreement if any circumstance identified in Section 8.6 delays the cure of any such default. This cure period may be extended if the goods and services necessary to cure same are not reasonably available to Owner within the 60 day time period; provided, that Owner shall provide the County with documentation and proof sufficient to satisfy the County that such goods or services are not available. If the County agrees that the goods and services are not reasonably available to Owner within the 60 day cure period, the cure period shall be extended for a period of an additional 30 days or such additional time period as the County deems reasonably necessary to cure the default.

5.4. Remedies. If an event of default is not cured in accordance with Section 5.3 above, then the County may, in addition to any other remedies it may have at law or in equity, avail itself any of the following remedies:

(1) The County shall be entitled to avail itself of any remedy available to it for the collection of property taxes under the Texas Tax Code or applicable law including: (i) the charging of interest on past due payments in lieu of taxes, penalties, attorney's fees and costs (in each case in the amounts provided by the Texas Tax Code for charges in connection with delinquent property taxes) and (ii) the County shall have a lien which shall be equivalent to a tax lien created pursuant to TEX. TAX CODE §32.01. This lien shall attach to all Taxable Property (as defined in Section 2.3 above) as provided in TEX. TAX CODE §32.01 and shall have the same priority as a tax lien existing under TEX. TAX CODE §32.01. This lien may be perfected by the filing of a statement with the County Clerk of Clay County, Texas and the filing of a UCC-1 or utility financing statement (or both) with the Secretary of State of the State of Texas and Owner hereby authorizes the County or an agent or representative of the County to file such instruments to perfect the lien. To the extent that these remedies and rights on behalf of the County are not conferred by law, Owner hereby agrees to them and grants the County the lien described above.

- (2) The County may cancel this Agreement.

(3) Within 90 days of the date of a demand by the County that it do so, the Owner shall pay to the County an amount equal to all taxes abated to the date of such notice together with penalties and interest as provided for in the Texas Tax Code.

(4) Foreclose any of the liens described in this Section 5.4 above.

(5) File suit against Owner seeking a judgment for any amounts owed to the County under this Agreement or applicable law.

The exercise by the County of any of the remedies provided in this Section 5.4 or 5.1 above shall not constitute an election of remedies and will not in any way limit the County's ability to exercise any other remedy available to it under this Agreement or applicable law.

5.5. No Abatement for Calendar Year of Default. If there is a default (other than a default pursuant to Section 5.1 above) and the County does not elect to collect all abated taxes pursuant to Section 5.4(1) above, Owner shall not be entitled to abatement of taxes for the calendar year in which the default occurs or for any portion of the remaining term of this Agreement. If a default continues over more than one day, it will be considered to have occurred on the date on which it first occurred.

#### **ARTICLE 6. ASSIGNMENT**

6.1. Assignment. Owner agrees that it will not assign any of its rights under this Agreement without the express written consent of the County.

#### **ARTICLE 7. NOTICES**

7.1. Notices. All notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed to be properly given when delivered personally to any of the hereinafter designated addresses or the named representatives thereof, or when mailed by prepaid certified mail, return receipt requested, addressed to such party at the respective addresses set forth below:

If to the County:

Clay County, Texas  
Attn: County Judge  
214 North Main Street  
Henrietta, Texas 76365

If to the Owner:

Triangle Brick Company  
Attn: Scott D. Mollenkopf

6523 NC Highway 55  
Durham, North Carolina 27713

Either party may change the address for notices by a written notice forwarded in accordance with the foregoing.

## **ARTICLE 8. GENERAL PROVISIONS**

8.1. **Governing Law; Venue.** This Agreement shall be construed and governed in accordance with the laws of the State of Texas without giving effect to its conflict of law rules. Venue for any action relating to the interpretation or performance of this Agreement or to enforce any right or obligation relating to this Agreement shall be in a court of competent jurisdiction having venue over cases arising in Clay County, Texas.

8.2. **Waiver.** The failure of either party to enforce any right or demand strict performance of any obligation of the other party under this Agreement shall not operate as, or be construed to be, a waiver of such right or obligation.

8.3. **Entire Agreement, Interpretation.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous discussions, representations, correspondence or agreements, written or oral. This Agreement may only be amended by a written instrument signed by both parties or their duly authorized officers or representatives. The language of this Agreement shall be construed as a whole according to its fair and common meaning and shall not be construed for or against either of the parties hereto. All titles or headings to sections or other divisions of this Agreement are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the content of this Agreement, such content being controlling as to the agreement between the parties hereto.

8.4. **Severability.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision of this Agreement.

8.5. **Agreement Subject to Rights of Bondholders.** This Agreement is subject to the rights of the holders of outstanding bonds of the County.

8.6. **Force Majeure.** If Owner's performance of any obligation or obligations under this Agreement is interrupted, delayed, or prevented by any contingency or cause beyond the control of Owner and which is not directly or indirectly caused by the acts or omissions of Owner's officers, employees or agents, then Owner shall be excused from the performance of any such obligation or obligations during the period of time that Owner is reasonably unable to perform such obligation or obligations as a result of such contingency or cause. Contingencies or causes beyond the control of Owner include, without limitation:

(1) Acts of God, or the public enemy, any natural disaster, war, riot, civil commotion, insurrection, fires, explosions, accidents, floods, and labor disputes or strikes;

(2) To the extent it affects the Owner's ability to perform a non-monetary covenant or obligation under this Agreement:

(a) A change in a governmental law or regulation shall be considered a contingency or cause beyond the control of Owner if Owner complies with the changed or revised law or regulation within the time limits, and in the manner, provided by such changed or revised law or regulation;

(b) A delay occasioned by the fact that supplies or materials are not reasonably available or the fact that a contractor or subcontractor is delayed in performing services and in either case the circumstance is not directly or indirectly caused by the acts or omissions of Owner.

8.8. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constituted, collectively, one agreement. Once all parties to this Agreement have signed a counterpart, this Agreement shall be binding upon all parties in accordance with the terms hereof.

8.9. Recording of Agreement. The parties agree to execute this Agreement in recordable form and that a duplicate of this Agreement shall be recorded in the Official Public Records of the County Clerk of Clay County, Texas.

8.10. Adoption of Agreement. The County agrees that any other taxing unit eligible to enter into agreements relating to the abatement of taxes may adopt all or any portion of this Agreement.

8.11. Further Acts. The parties each agree to cooperate fully with the other and to take such further action and execute such other documents or instruments as necessary or appropriate to implement the terms of this Agreement.

8.12. Reimbursement of Expenses. Owner agrees to reimburse the County for its reasonable and necessary attorney's fees incurred in the negotiation and preparation of this Agreement. Owner agrees to pay such expenses to the County within 30 days of the date it is billed for such expenses by the County.

Attachments:

Exhibit A – copy of *Order Designating the Southwest Clay County Wind Power Reinvestment Zone*

Exhibit B – Description of Improvements



ATTEST:

COUNTY:

Clay County, Texas

\_\_\_\_\_  
Sasha Kelton, County Clerk

By: \_\_\_\_\_

Kenneth Liggett, County Judge

OWNER:

Triangle Brick Company

By: \_\_\_\_\_

STATE OF TEXAS )

COUNTY OF CLAY )

This instrument was acknowledged before me on the \_\_\_\_ day of July, 2014 by Kenneth Liggett, County Judge of Clay County, Texas on behalf of said County.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of July, 2014 by \_\_\_\_\_, \_\_\_\_\_ of Triangle Brick Company, a North Carolina corporation on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Exhibit A

Order of Commissioners Court of Clay County follows this page.

English

Customer Service

USPS Mobile

Register / Sign In



Search USPS.com or Track Packages

Quick Tools

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

# USPS Tracking™



Customer Service ›  
Have questions? We're here to help.

Tracking Number: 70131090000197522791

## Product & Tracking Information

Postal Product:

Features:  
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
July 19, 2014 , 7:45 am	Business Closed	HENRIETTA, TX 76365

Your item is being held at the Post Office in HENRIETTA, TX 76365 on July 19, 2014 at 7:45 am because the business was closed. The item will be delivered the next delivery day. If this item is unclaimed after 15 days then it will be returned to the sender. Information, if available, is updated periodically throughout the day. Please check again later.

July 19, 2014 , 7:24 am	Arrival at Unit	HENRIETTA, TX 76365
July 19, 2014 , 5:11 am	Depart USPS Sort Facility	FORT WORTH, TX 76161
July 19, 2014 , 3:22 am	Processed through USPS Sort Facility	FORT WORTH, TX 76161
July 19, 2014 , 12:54 am	Depart USPS Sort Facility	COPPELL, TX 75099
July 18, 2014 , 11:57 pm	Processed through USPS Sort Facility	COPPELL, TX 75099

## Available Actions

Text Updates

Email Updates

## Track Another Package

What's your tracking (or receipt) number?

Track It

### LEGAL

- Privacy Policy ›
- Terms of Use ›
- FOIA ›
- No FEAR Act EEO Data ›

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**JAY A. CANTRELL**  
*A Professional Corporation*  
**ATTORNEY AT LAW**

Telephone: (940) 766-3305  
Fax No. (940) 322-3462

807 Eighth Street, Suite 810  
Wichita Falls, Texas 76301-3319

email: [jay@jaycantrell.com](mailto:jay@jaycantrell.com)

July 18, 2014

*Via Certified Mail, Return Receipt Requested*

Ms. Penny Riordan,  
President of the Board of Trustees  
Henrietta Independent School District  
1801 East Crafton  
Henrietta, Texas 76365

Re: Tax Abatement Agreement between Clay County and  
Triangle Brick Company

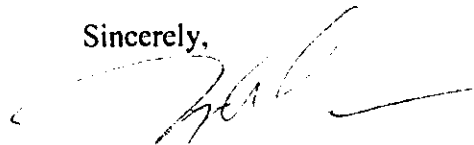
Dear Ms. Riordan:

This letter is to provide you with notice that the Commissioners Court of Clay County, Texas will consider, and act upon, a proposed Tax Abatement Agreement with Triangle Brick Company at a regular meeting of the Commissioners Court at 10:00 a.m. on Monday, July 28, 2014. The meeting will be held in the Commissioners Courtroom in the Clay County Annex Building, 214 N. Main Street, Henrietta, Texas.

I am enclosing a copy of the proposed Tax Abatement Agreement. This letter is being sent to you as the representative of the Henrietta Independent School District as required by Chapter 312 of the Texas Tax Code.

If you have any questions on this matter, please do not hesitate to contact me.

Sincerely,



Jay A. Cantrell

Enclosure – copy of proposed Tax Abatement Agreement

**TAX ABATEMENT AGREEMENT**  
**Between**  
**CLAY COUNTY, TEXAS and TRIANGLE BRICK COMPANY**  
(Within the Southeast Clay County Reinvestment Zone)

This Tax Abatement Agreement (this "Agreement") is entered into by and between Clay County, Texas (the "County") duly acting herein by and through its County Judge, and Triangle Brick Company, a North Carolina corporation duly authorized to do business in the State of Texas ("Owner") effective July \_\_\_, 2014 and is as follows:

Recitals:

A. On May 10, 2010, the Commissioners Court of Clay County, Texas (the "Commissioners Court") adopted a resolution stating that the County had elected to become eligible to participate in tax abatements pursuant to the *Texas Property Redevelopment and Tax Abatement Act*, as amended (herein referred to as the "Act"), being Chapter 312 of the Texas Tax Code, and on that same date adopted guidelines and criteria governing tax abatement agreements entered into by the County (hereinafter referred to as the "Guidelines"); which Guidelines were renewed and extended by the Commissioners Court on July 8, 2013.

B. On the July 7, 2014, the Commissioners Court conducted a public hearing on the advisability of designating a reinvestment zone which is eligible for property tax abatement as authorized by the Act and the Guidelines, which public hearing was preceded by: (i) notice published on June 26, 2014 (more than 7 days prior to the date of the public hearing) in the Clay County Leader, a newspaper of general circulation within Clay County, Texas, (ii) notice provided more than 7 days prior to the public hearing to the presiding officers, respectively, of the Henrietta Independent School District and the Bellevue Independent School District, those entities being the only other taxing units located within the proposed Reinvestment Zone and (iii) notice posted in accordance with Chapter 551 of the Texas Government Code (the Open Meetings Act) and following the conclusion of the public hearing on July 7, 2014, the Commissioners Court adopted an *Order Designating the Southeast Clay County Reinvestment Zone*, a true copy of which is attached hereto, marked as Exhibit A and incorporated herein for all purposes, designating the following lands owned by Owner and located in Clay County, Texas (the "Lands") as the Southeast Clay County Reinvestment Zone (herein, the "Reinvestment Zone"), to-wit:

Tract 1: A 994.84 ACRE TRACT BEING ALL OR PART OF THE FOLLOWING SURVEYS SITUATED IN CLAY COUNTY, TEXAS;  
THE YARBOROUGH & STONE SURVEY, ABSTRACT NO. 1101, THE J. ELSEFFER SURVEY, ABSTRACT NO.1019, THE A. YARBOROUGH SURVEY, ABSTRACT NO. 947, THE F. BISHOP SURVEY, ABSTRACT NO. 783, THE I. & G. N. RAILROAD COMPANY SURVEY, ABSTRACT NO. 262, THE R. SUNAGAS SURVEY, ABSTRACT NO. 408, THE L. BEARDEN SURVEY, ABSTRACT NO. 844, THE L. P. HAPGOOD SURVEY, ABSTRACT NO. 1140, THE E.B. CARVER SURVEY NO. 1, ABSTRACT NO. 999 AND THE E. B. CARVER SURVEY NO.2, ABSTRACT NO. 1000, BEING A PART OF THAT CERTAIN TRACT DEEDED TO TERRILL J. & SAMMIE N. HORTON FROM RANDY HAPGOOD IN JANUARY, 2006, AS

RECORDED IN VOLUME 496, PAGE 304, CLAY COUNTY DEED RECORDS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A ½ INCH IRON ROD FOUND BEING THE NORTHWEST CORNER OF THE T. & N.O. RAILROAD COMPANY SURVEY NO.3, ABSTRACT NO. 670, CLAY COUNTY, TEXAS, BEING AN INTERIOR CORNER OF SAID E. B. CARVER SURVEY NO. 2, BEING AN ANGLE POINT ON THE CENTERLINE OF SCALING RANCH ROAD, A COUNTY ROAD, AND BEING AN INTERIOR CORNER OF SAID HORTON TRACT FOR AN INTERIOR CORNER AND PLACE OF BEGINNING OF THIS TRACT;

THENCE SOUTH 00°0'13" EAST, PASSING THE SOUTH LINE OF SAID CARVER SURVEY NO.2 AND THE NORTH LINE OF SAID CARVER SURVEY NO.1, A DISTANCE OF 876.76 FEET ALONG THE WEST LINE OF SAID T. & N.O. RR. CO. SURVEY, THE CENTERLINE OF SAID SCALING RANCH ROAD AND THE EAST LINES OF SAID CARVER SURVEYS AND SAID HORTON TRACT TO A ½ INCH IRON ROD FOUND BEING THE POINT OF INTERSECTION OF THE WEST LINE OF SAID T. & N. O. RR. CO. SURVEY, THE CENTERLINE OF SAID SCALING RANCH ROAD, AND THE EAST LINE OF SAID CARVER SURVEY NO. 2 WITH THE NORTHEAST RIGHT-OF-WAY LINE OF A 100 FOOT WIDE BURLINGTON NORTHERN SANTA FE RAILROAD COMPANY RIGHT-OF-WAY, SAID IRON ROD ALSO BEING THE MOST SOUTHERLY SOUTHWEST CORNER OF SAID HORTON TRACT FOR THE MOST SOUTHERLY SOUTHEAST CORNER OF THIS TRACT;

THENCE LEAVING THE WEST LINE OF SAID T. & N. O. RR. CO. SURVEY AND THE EAST LINE OF SAID CARVER SURVEY NO.1, NORTH 36°21'40" WEST, PASSING THE NORTH LINE OF SAID CARVER SURVEY NO. 1 AND THE SOUTH LINE OF SAID CARVER SURVEY NO. 2 AND PASSING THE NORTH LINE OF SAID CARVER SURVEY NO. 2 AND THE SOUTH LINE OF SAID R. SUNAGAS SURVEY, ABSTRACT NO. 408, 4,912.07 FEET ALONG THE SOUTHWEST LINE OF SAID HORTON TRACT AND THE NORTHEAST RIGHT-OF-WAY LINE OF SAID BNSF RAILROAD COMPANY RIGHT-OF-WAY TO A ½ INCH IRON ROD SET BEING A POINT OF CURVATURE ON THE SOUTHWEST LINE OF SAID HORTON TRACT AND THE NORTHEAST RIGHT-OF-WAY LINE OF SAID RAILROAD RIGHT-OF-WAY FOR A POINT OF CURVATURE ON THE SOUTHWEST LINE OF THIS TRACT;

THENCE IN A NORTHWESTERLY DIRECTION ALONG THE SOUTHWEST LINE OF SAID HORTON TRACT, ALONG THE NORTHEAST RIGHT-OF-WAY LINE OF SAID BNSF RAILROAD COMPANY RIGHT-OF-WAY, AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 6,400.00 FEET, AN ARC LENGTH OF 1,401.35 FEET, AND WHOSE CHORD BEARS NORTH 30°05'18" WEST 1398.55 FEET TO A ½ INCH IRON ROD SET BEING A POINT OF TANGENCY ON THE SOUTHWEST LINE OF SAID HORTON TRACT AND THE NORTHEAST RIGHT- OF-WAY LINE OF SAID RAILROAD RIGHT-OF-WAY LINE OF SAID RAILROAD RIGHT-OF-WAY FOR A POINT OF TANGENCY ON THE SOUTHWEST LINE OF THIS TRACT;

THENCE NORTH 23°48'58" WEST, PASSING THE NORTH LINE OF SAID SUNAGAS SURVEY AND THE SOUTH LINE OF SAID F. BISHOP SURVEY,

ABSTRACT NO. 783, AND PASSING THE NORTH LINE OF SAID BISHOP SURVEY AND THE SOUTH LINE OF SAID YARBROUGH & STONE SURVEY, ABSTRACT NO. 1101 A DISTANCE OF 6,758.93 FEET ALONG THE SOUTHWEST LINE OF SAID HORTON TRACT AND THE NORTHEAST RIGHT-OF-WAY LINE OF SAID BNSF RAILROAD COMPANY RIGHT-OF-WAY TO A ½ INCH IRON ROD FOUND BEING THE POINT OF INTERSECTION OF THE NORTH LINE OF SAID YARBROUGH & STONE SURVEY, THE CENTERLINE OF HAPGOOD ROAD, A COUNTY ROAD, AND THE SOUTH LINE OF THE T. & N. O. RAILROAD COMPANY SURVEY NO. 7, ABSTRACT NO. 679, WITH THE NORTHEAST RIGHT-OF-WAY LINE OF SAID RAILROAD RIGHT-OF-WAY, AND BEING A POINT WHERE THE NORTHWEST BOUND RAILROAD RIGHT-OF-WAY WIDENS TO 150 FEET WIDE, SAID IRON ROD BEING A NORTHWEST CORNER OF SAID HORTON TRACT FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 89°49'09" EAST, PASSING THE EAST LINE OF SAID YARBROUGH & STONE SURVEY AND THE WEST LINE OF SAID J. ELSEFFER SURVEY, ABSTRACT NO. 1019, A DISTANCE OF 2,280.47 FEET ALONG THE NORTH LINE OF SAID HORTON TRACT AND SAID YARBROUGH & STONE AND ELSEFFER SURVEYS, ALONG THE CENTERLINE OF SAID HAPGOOD ROAD, AND ALONG THE SOUTH LINE OF SAID T. & N. O. RR. CO. SURVEY NO. 7 TO A ½ INCH IRON ROD SET FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE LEAVING THE NORTH LINE OF SAID HORTON TRACT AND SAID YARBROUGH & STONE AND ELSEFFER SURVEYS, THE CENTERLINE OF SAID HAPGOOD ROAD AND THE SOUTH LINE OF SAID T. & N. O. RR. CO. SURVEY NO.7, SOUTH 00°12'09" EAST 627.26 FEET TO A ½ INCH IRON ROD FOUND FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE SOUTH 54°39'31" EAST 1,455.90 FEET TO A ½ INCH IRON ROD SET IN A FENCELINE ALONG THE WEST SIDE OF A CULTIVATED FIELD FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE SOUTH 00°16'27" WEST 1,082.43 FEET ALONG A FENCELINE ON THE WEST SIDE OF SAID FIELD TO A FENCE CORNER POST ON THE SOUTH LINE OF SAID ELSEFFER SURVEY AND THE NORTH LINE OF SAID F. BISHOP SURVEY BEING THE SOUTHWEST CORNER OF SAID CULTIVATED FIELD FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE NORTH 89°40'56" EAST 544.60 FEET ALONG THE SOUTH LINE OF SAID ELSEFFER SURVEY AND SAID CULTIVATED FIELD AND ALONG THE NORTH LINE OF SAID BISHOP SURVEY TO A FENCE CORNER POST BEING THE SOUTHEAST CORNER OF SAID ELSEFFER SURVEY AND SAID FIELD AND AN ANGLE POINT ON THE WEST LINE OF SAID A. YARBROUGH SURVEY, ABSTRACT NO 947, FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;

THENCE LEAVING THE NORTH LINE OF SAID BISHOP SURVEY, NORTH 00°16'34" EAST 1,077.54 FEET ALONG THE EAST LINE OF SAID ELSEFFER SURVEY AND SAID CULTIVATED FIELD AND ALONG THE WEST LINE OF SAID A. YARBROUGH SURVEY TO A ½ INCH IRON ROD FOUND FOR AN ANGLE POINT ON THE NORTH LINE OF THIS TRACT;



THENCE LEAVING THE EAST LINE OF SAID ELSEFFER SURVEY AND SAID CULTIVATED FIELD AND THE WEST LINE OF SAID A. YARBROUGH SURVEY, EAST, PASSING THE EAST LINE OF SAID A. YARBROUGH SURVEY AND THE WEST LINE OF SAID I. & G. N. RR. CO. SURVEY, ABSTRACT 262, A DISTANCE OF 3,303.60 FEET TO A ½ INCH IRON ROD ON THE EAST LINE OF SAID I. & G. N. RR. CO SURVEY AND THE WEST LINE OF THE MARION COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 308, FOR THE NORTHEAST CORNER OF THIS TRACT.

THENCE SOUTH 00°25'10" EAST 4,900.46 FEET ALONG THE EAST LINE OF SAID I & G. N. RR. CO. SURVEY AND THE WEST LINE OF SAID MARION COUNTY SCHOOL LAND SURVEY TO A ½ INCH IRON ROD FOUND LYING NORTH 00°25'10" WEST 60.00 FEET FROM THE SOUTHWEST CORNER OF SAID MARION COUNTY SCHOOL LAND SURVEY AND AN INTERIOR CORNER OF SAID I. & G. N. RR. CO. SURVEY FOR AN ANGLE POINT ON THE EAST LINE OF THIS TRACT; THENCE LEAVING THE EAST LINE OF SAID I. & G. N. RR. CO. SURVEY AND THE WEST LINE OF SAID MARION COUNTY SCHOOL LAND SURVEY , SOUTH 89°57'18" WEST 59.98 FEET TO A ½ INCH IRON ROD FOUND FOR AN ANGLE POINT ON THE EAST LINE OF THIS TRACT;

THENCE SOUTH 00°24'13" EAST PASSING THE SOUTH LINE OF SAID I. & G. N. RR. CO. SURVEY AND THE NORTH LINE OF SAID L. P. HAPGOOD SURVEY, ABSTRACT NO. 1140, AND PASSING THE SOUTH LINE OF SAID HAPGOOD SURVEY AND THE NORTH LINE OF SAID CARVER SURVEY NO. 2, A DISTANCE OF 4,094.77 FEET TO A 1/2 INCH IRON ROD ON THE SOUTH LINE OF SAID CARVER SURVEY NO. 2 AND SAID HORTON TRACT, THE CENTERLINE OF SAID SCALING RANCH ROAD, AND THE NORTH LINE OF SAID T. & N. O. RR. CO. SURVEY, ABSTRACT NO. 670, SAID IRON ROD LYING SOUTH 89°13'29" WEST 60.00 FEET FROM THE SOUTHEAST CORNER OF SAID CARVER SURVEY NO. 2 AND A SOUTHEAST CORNER OF SAID HORTON TRACT, THE SOUTHWEST CORNER OF SAID I. & G. N. RR. CO. SURVEY, FOR THE MOST EASTERLY SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 89°13'29" WEST 980.96 FEET ALONG THE SOUTH LINE OF SAID CARVER SURVEY NO. 2 AND SAID HORTON TRACT, ALONG THE CENTERLINE OF SAID SCALING RANCH ROAD, AND ALONG THE NORTH LINE OF SAID T. & N. O. RR. CO. SURVEY TO THE PLACE OF BEGINNING, AND CONTAINING 994.84 ACRES, MORE OR LESS.

Tract 2: A 1.245 ACRE TRACT OUT OF THE T. & N.O. RR. CO. SURVEY NO. 7, ABSTRACT NO. 679, CLAY COUNTY, TEXAS; BEING PART OF A CERTAIN 795.96 ACRES TRACT DESCRIBED IN VOLUME 396, PAGE 592 OF THE DEED RECORDS OF CLAY COUNTY, TEXAS; AND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 1/2" IRON ROD AT THE INTERSECTION OF THE SOUTH LINE OF SAID T. & N.O. RR. CO. SURVEY NO.7 AND THE EAST RIGHT OF WAY LINE OF THE F.W. & D.C. RR. AND IN THE CENTER OF EAST HAPGOOD DRIVE (PAVED) AND AT THE NORTHWEST CORNER OF A CERTAIN 994.82 ACRES TRACT FOR THE SOUTHWEST AND BEGINNING CORNER OF THIS

EASEMENT.

THENCE N. 26 DEG. 22 MIN. 47 SEC. W. 26.71 FEET ALONG THE EAST RIGHT OF WAY LINE OF SAID F.W. & D.C. RR . TO A POINT FOR THE NORTHWEST CORNER OF THIS EASEMENT.

THENCE N. 89 DEG. 49 MIN. 58 SEC. E. 2292.25 FEET ALONG THE NORTH RIGHT OF WAY FENCE OF SAID EAST HAPGOOD DRIVE TO A POINT FOR THE NORTHEAST CORNER OF THIS EASEMENT.

THENCE S. 00 DEG. 12 MIN. 09 SEC. E. 23.46 FEET TO A FOUND CAPPED 1/2" IRON ROD IN SAID EAST HAPGOOD DRIVE AND AT THE MOST NORTHERLY NORTHEAST CORNER OF SAID 994.82 ACRES TRACT AND AT A CORNER OF A CERTAIN 4292.742 ACRES TRACT (TRACT 1) DESCRIBED IN VOLUME 4, PAGE 118 OF THE OFFICIAL PUBLIC RECORDS OF CLAY COUNTY, TEXAS, FOR THE SOUTHEAST CORNER OF THIS EASEMENT.

THENCE S. 89 DEG. 49 MIN. 13 SEC. W. 2280.47 FEET ALONG SAID EAST HAPGOOD DRIVE TO THE PLACE OF BEGINNING

C. Owner has proposed certain improvements to be located on the Lands and within the Reinvestment Zone, generally described as a clay mining and brick manufacturing facility and related improvements and transportation facilities (which improvements are more particularly described and defined in Section 1.1 and are hereinafter collectively referred to as the "Improvements").

D. The Commissioners Court has concluded that the Improvements and operations proposed by Owner within the Reinvestment Zone and described in this Agreement and the terms of this Agreement: (i) are consistent with the requirements of the Act and the Guidelines or, to the extent of any inconsistency with the Guidelines, the Commissioners Court has determined, in its discretion and in accordance with TEX. TAX CODE §312.002(d), that this Agreement should be entered into notwithstanding any such inconsistency, and (ii) constitute a major investment in the Reinvestment Zone that will be a benefit to the Reinvestment Zone and will contribute to the economic development of the County.

E. Notice of the County's intent to enter into this Agreement has been provided to the presiding officers of the Henrietta Independent School District and the Bellevue Independent School District; those being the only other governmental entities levying taxes within the area encompassed by the Lands.

F. This Agreement was adopted at a regularly scheduled meeting of the Commissioners Court which was preceded by written notice which was properly posted in accordance with the Open Meetings Act and at which a quorum of the Commissioners Court was present.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the parties do hereby agree as follows:

**ARTICLE 1.  
IMPROVEMENTS**

1.1. **Improvements in Reinvestment Zone.** Owner agrees to construct the Improvements within the Reinvestment Zone in accordance with this Agreement. As used in this Agreement, the term "Improvements" shall mean and refer to a clay mining and brick manufacturing facility and related improvements and transportation facilities for the manufacture of brick which are more particularly described in Exhibit B which is attached hereto and incorporated herein for all purposes. The kind, number and location of all contemplated Improvements are described in Exhibit B.

1.2. **Timing of Improvements.** Owner projects that construction of Improvements will begin December 5<sup>th</sup>, 2014 and will be substantially completed by April 30<sup>th</sup>, 2016. If Owner has not substantially completed construction of the Improvements by December 31, 2017, County may terminate this Agreement.

1.3. **Plans and Specifications, Governmental Requirements and Workmanship.** All Improvements shall be constructed and installed in accordance with plans and specifications prepared by an engineer or architect licensed within one of the states of the United States of America and in accordance with all regulations of any governmental agency or entity having jurisdiction over any aspect of the construction. Owner shall take such steps as are reasonably necessary to see that all work on the Improvements is completed in a good and workmanlike manner.

1.4 The base year (as of January 1, 2014) value for the proposed Improvements is zero.

**ARTICLE 2.  
TAX ABATEMENT**

2.1. **Tax Abatement Granted.** Subject to the terms and conditions of this Agreement, the County agrees to abate, for each year during the Abatement Period defined in Section 2.3 below, the property tax levied by the County on that portion or percentage of the value of the Eligible Property (hereinafter defined) set forth by each year during the Abatement Period pursuant to the following chart:

<u>Year</u>	Percentage of Value of Eligible Property Subject to Abatement
1	
2	
3	
4	
5	
6	
7	

2.2. Eligible Property. The property eligible for tax abatement under this Agreement (the "Eligible Property") shall be the Improvements described in Exhibit B and all tangible personal property located on the Lands during the Abatement Period. Notwithstanding the foregoing, only property located within the Reinvestment Zone which is eligible for tax abatement pursuant to Chapter 312 of the Texas Tax Code and meets the definition of an improvement as provided in Chapter 1 of the Texas Tax Code shall be eligible for tax abatement under this Agreement and included within the definition of "Improvements" pursuant to this Agreement. The value of the Lands and all taxable property, including improvements, located on the Lands which are put in place after this Agreement is executed but prior to the Commencement Date (as defined in Section 2.3 below) shall be subject to property taxation without abatement in accordance with the Texas Tax Code.

2.3. Abatement Period; Term of Agreement. Subject to the limitations set forth in Section 1.2 above, Owner may elect to begin the Abatement Period on either January 1, 2016 or January 1, 2017 by written notice to the County Judge of such election prior to the date elected by Owner. The date elected by Owner to begin the Abatement Period is hereinafter referred to as the "Commencement Date". The Abatement Period will terminate on December 31 of the seventh (7<sup>th</sup>) year following the Commencement Date, unless sooner terminated in accordance with the terms of this Agreement. Termination of this Agreement shall not relieve either party of any covenants, obligations or payments owing to the other as of the date the Agreement is terminated.

2.4. Conditions to Tax Abatement. The tax abatement granted by this Agreement is expressly conditioned upon the following conditions which must be satisfied throughout the entire term of this Agreement and with which Owner agrees to comply with at all times, subject, however, to the notice and cure rights of Owner set forth in Article 5 hereof:

(a) Construction of the Improvements. Owner's timely construction of the Improvements in accordance with this Agreement.

(b) Operations. Owner's operation of the Facilities in accordance with this Agreement, including those provisions requiring commercial viability. As used in this Agreement the term "Facilities" shall mean the Improvements and all other tangible property or fixtures used by Owner in connection with its operations on the Lands and shall include any property added to the Improvements because of repairs, retrofitting or additional improvements during the term of this Agreement which are not the result of a casualty loss.

(c) Compliance with this Agreement. Owner's compliance with all covenants and obligations undertaken by Owner pursuant to the terms of this Agreement.

(d) Accuracy of Representations. The accuracy and truthfulness of the representations by Owner contained in this Agreement as of the date this Agreement is executed and throughout the term of this Agreement.

(e) Payment of Taxes. The payment by Owner and all affiliates and subsidiaries of Owner, prior to delinquency, of all taxes levied by the County, any other taxing unit within the County, the State of Texas or the United States of America, that are related to the Facilities. It

shall not be a violation of this provision if the party who is assessed the tax in good faith protests the levy or assessment of a particular tax by the timely filing of appropriate proceedings to prosecute a protest or contest of the tax, makes payment of the disputed tax during such protest or contest as required by applicable law and pays the tax, as finally determined, prior to delinquency as required by applicable law.

(f) **Payment of Debts, Obligations.** The parties agree that the following shall be an event of default under Article 5 of this Agreement:

(1) The entry of a final, non-appealable judgment against Owner for money owed;

(2) The filing of a mechanic's or materialmen's lien against the Improvements or the Facilities which is not contested by Owner within 90 days of the date of its filing; or

(3) The filing, by Owner, of a petition for relief under Title 11 of the United States Code.

(g) **Continued Operations following Abatement.** Owner agrees to continue operation of the Facilities in a commercially viable manner (as defined in Section 3.4 below) for a period of seven (7) years after the end of the Abatement Period.

**ARTICLE 3.  
COVENANTS APPLICABLE TO CONSTRUCTION  
AND OPERATIONS AFTER CONSTRUCTION**

3.1. **Job Creation.** Owner agrees to create, and maintain, not fewer than 38 new full time jobs in connection with the construction of the Improvements and operation of the Facilities either through direct employment by Owner or through employment by contractors or service providers engaged to provide goods or services in connection with the construction of the Improvements and thereafter in the course of operating the Facilities.

3.2. **Safe Operations; Compliance with Governmental Requirements, Permits.** Owner agrees to operate the Facilities in a reasonable, prudent and safe manner and in compliance with all rules and regulations of any governmental entity having jurisdiction of its operations and in accordance with any permits issued by any governmental agency or entity with respect to its operations. Owner shall not be in violation of this covenant if Owner remedies or properly addresses any violation, or alleged violation, of a governmental rule or regulation within the time period required by the governmental agency having jurisdiction of such matter.

3.3. **Commercial Viability of Operations.** After construction of the Improvements is completed and throughout the term of this Agreement the Facilities shall be operated and used in a manner that insures its commercial viability and in a manner consistent with the County's generally purpose of encouraging development of the Reinvestment Zone.

3.4. Local Spending. Owner agrees it will use commercially reasonable efforts to give preference to contractors and vendors located in the County in the construction of the Improvements and the operation and maintenance of the Facilities provided that Owner will not be required to use goods and services provided by local contractors or vendors where such local goods or services are not comparable to those provided by nonresidents or where such goods and services are not available on terms and conditions (including price and bonding capacity) comparable to those offered by nonresidents. Additionally, Owner agrees to do the following:

(2) Not later than one month prior to filling a full time position (excepting internal transfer and promotions) for the operation of the Facilities, Owner shall publish notice of the position in the *Clay County Leader* describing the position and the procedure for application. Any position requiring more than 35 hours per week shall be considered full time.

3.5. Annual Certification. On or before January 31 of each calendar year that this Agreement is in effect Owner shall certify to the County its compliance with all provisions of this Agreement. The annual certification shall contain a statement, sworn to by an authorized officer of Owner, stating that Owner is in compliance with each applicable term of this Agreement.

3.6. Determination of Value. The Chief Appraiser of the Appraisal District shall annually determine the Certified Appraised Value of all real and personal property making up the Facilities without regard to the abatement granted by this Agreement in accordance with applicable law and the Certified Appraised Value of such property after applying the abatement granted this Agreement. The Chief Appraiser shall then record both values in the appraisal records. The value of the Facilities without regard to the abatement shall be used to compute the amount of abated taxes that are required to be recaptured and paid to the County in the event recapture of such taxes is required by this Agreement or applicable law. During the term of this Agreement, Owner shall each year furnish the Chief Appraiser of the Appraisal District with such information as is required by applicable law (including Chapter 22 of the Texas Tax Code) and as may be necessary for the administration of the abatement specified in this Agreement. The Appraisal District will determine the values required herein in any manner permitted by applicable law, but without limitation of Owner's rights in Section 3.7 hereinbelow. As used in this Agreement, the term "Certified Appraised Value" shall mean the appraised value of property that is subject to property taxation under the Texas Tax Code determined and certified by the Chief Appraiser of the Clay County Central Appraisal District for each taxable year.

3.7. Owner's Right of Protest. Nothing in this Agreement shall limit Owner's right to protest and contest any appraisal or assessment of the Facilities in accordance with applicable law. The abatement to which Owner is entitled will be governed by the values finally determined in proceedings relative to any such protest or contest by Owner.

3.8. Estoppel Certificates. Either party hereto may request an estoppel certificate from the other party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate shall certify, as of the date of the certificate: (i) that this Agreement is in full force and effect without default if such is the case, (ii) the remaining term of this Agreement, and (iii) such other matters as may be agreed upon by the parties.

3.9. Damage or Destruction of Improvements. If the Improvements, or any portion thereof, are destroyed or damaged by fire, windstorm or other causes, regardless of whether such causes are based upon an act or omission of Owner or an agent, employee or officer of Owner, Owner shall replace or repair the damaged or destroyed item(s) to the extent required to maintain the commercial viability of its operations at the Facilities.

**ARTICLE 4.  
REPRESENTATIONS**

4.1. By the County: The County hereby warrants and represents to Owner:

(1) That none of the tracts on which the Improvements or the Facilities are located are owned or leased by any member of the Commissioners Court.

(2) That this Agreement was authorized by an order of the Commissioners Court adopted at its meeting on the date first set forth above, authorizing the County Judge to execute this Agreement on behalf of the County.

4.2. By Owner. Owner hereby warrants and represents to the County:

(1) That Owner is a Corporation organized under the laws of the State of North Carolina and is in good standing with, and authorized to conduct business within, the State of Texas.

(2) That Owner is not in default in the payment of any taxes owing to the federal, state or any local governmental units.

(3) That the officers of Owner signing this Agreement are properly authorized to enter into this Agreement and bind Owner to the terms thereof and Owner is thereby authorized to perform all covenants undertaken by Owner pursuant to this Agreement.

(4) That there is no operating agreement, certificate of formation provision, or agreement between Owner and any third party which in any way limits Owner's authority to enter into this Agreement and perform all covenants and agreements set forth herein.

**ARTICLE 5.  
DEFAULT; REMEDIES**

5.1. Default In Constructing Improvements. If Owner fails to complete the Improvements in the manner, and within the time period, stated in this Agreement, and Owner's failure to comply with those provisions of this Agreement are not cured following notice to Owner pursuant to Section 5.3 below, Owner shall be in default under the terms of this Agreement. In the event of a default in the construction of the Improvements the County may terminate or cancel this Agreement and Owner shall pay to the County all property tax revenues (including penalties, interest, attorney's fees and costs) that would have been payable to the County in the absence of this Agreement.

5.2. Default In Operations, Payments or Performance of Other Covenants. The occurrence of any of the following circumstances shall be an event of default under the terms of this Agreement:

- (1) Owner fails to timely pay any property taxes owing to County; or
- (2) Owner fails to timely perform any covenant, condition or agreement it has undertaken pursuant to the terms of this Agreement; or
- (3) Any representation made by Owner in Section 4.2 of this Agreement is untrue or, with the passage of time, becomes materially untrue.

5.3. Notice, Right to Cure. Upon the occurrence of an event of default (including default under Sections 5.1 or 5.2 above), the County shall give the Owner written notice specifying the default. Owner shall cure such default within 60 days of the date of the notice of default by the County. This cure period shall be extended for the period of time referred to in Section 8.6 of this Agreement if any circumstance identified in Section 8.6 delays the cure of any such default. This cure period may be extended if the goods and services necessary to cure same are not reasonably available to Owner within the 60 day time period; provided, that Owner shall provide the County with documentation and proof sufficient to satisfy the County that such goods or services are not available. If the County agrees that the goods and services are not reasonably available to Owner within the 60 day cure period, the cure period shall be extended for a period of an additional 30 days or such additional time period as the County deems reasonably necessary to cure the default.

5.4. Remedies. If an event of default is not cured in accordance with Section 5.3 above, then the County may, in addition to any other remedies it may have at law or in equity, avail itself any of the following remedies:

(1) The County shall be entitled to avail itself of any remedy available to it for the collection of property taxes under the Texas Tax Code or applicable law including: (i) the charging of interest on past due payments in lieu of taxes, penalties, attorney's fees and costs (in each case in the amounts provided by the Texas Tax Code for charges in connection with delinquent property taxes) and (ii) the County shall have a lien which shall be equivalent to a tax lien created pursuant to TEX. TAX CODE §32.01. This lien shall attach to all Taxable Property (as defined in Section 2.3 above) as provided in TEX. TAX CODE §32.01 and shall have the same priority as a tax lien existing under TEX. TAX CODE §32.01. This lien may be perfected by the filing of a statement with the County Clerk of Clay County, Texas and the filing of a UCC-1 or utility financing statement (or both) with the Secretary of State of the State of Texas and Owner hereby authorizes the County or an agent or representative of the County to file such instruments to perfect the lien. To the extent that these remedies and rights on behalf of the County are not conferred by law, Owner hereby agrees to them and grants the County the lien described above.

(2) The County may cancel this Agreement.



(3) Within 90 days of the date of a demand by the County that it do so, the Owner shall pay to the County an amount equal to all taxes abated to the date of such notice together with penalties and interest as provided for in the Texas Tax Code.

(4) Foreclose any of the liens described in this Section 5.4 above.

(5) File suit against Owner seeking a judgment for any amounts owed to the County under this Agreement or applicable law.

The exercise by the County of any of the remedies provided in this Section 5.4 or 5.1 above shall not constitute an election of remedies and will not in any way limit the County's ability to exercise any other remedy available to it under this Agreement or applicable law.

5.5. No Abatement for Calendar Year of Default. If there is a default (other than a default pursuant to Section 5.1 above) and the County does not elect to collect all abated taxes pursuant to Section 5.4(1) above, Owner shall not be entitled to abatement of taxes for the calendar year in which the default occurs or for any portion of the remaining term of this Agreement. If a default continues over more than one day, it will be considered to have occurred on the date on which it first occurred.

**ARTICLE 6.  
ASSIGNMENT**

6.1. Assignment. Owner agrees that it will not assign any of its rights under this Agreement without the express written consent of the County.

**ARTICLE 7.  
NOTICES**

7.1. Notices. All notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed to be properly given when delivered personally to any of the hereinafter designated addresses or the named representatives thereof, or when mailed by prepaid certified mail, return receipt requested, addressed to such party at the respective addresses set forth below:

If to the County:

Clay County, Texas  
Attn: County Judge  
214 North Main Street  
Henrietta, Texas 76365

If to the Owner:

Triangle Brick Company  
Attn: Scott D. Mollenkopf

6523 NC Highway 55  
Durham, North Carolina 27713

Either party may change the address for notices by a written notice forwarded in accordance with the foregoing.

## **ARTICLE 8. GENERAL PROVISIONS**

8.1. **Governing Law; Venue.** This Agreement shall be construed and governed in accordance with the laws of the State of Texas without giving effect to its conflict of law rules. Venue for any action relating to the interpretation or performance of this Agreement or to enforce any right or obligation relating to this Agreement shall be in a court of competent jurisdiction having venue over cases arising in Clay County, Texas.

8.2. **Waiver.** The failure of either party to enforce any right or demand strict performance of any obligation of the other party under this Agreement shall not operate as, or be construed to be, a waiver of such right or obligation.

8.3. **Entire Agreement, Interpretation.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous discussions, representations, correspondence or agreements, written or oral. This Agreement may only be amended by a written instrument signed by both parties or their duly authorized officers or representatives. The language of this Agreement shall be construed as a whole according to its fair and common meaning and shall not be construed for or against either of the parties hereto. All titles or headings to sections or other divisions of this Agreement are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the content of this Agreement, such content being controlling as to the agreement between the parties hereto.

8.4. **Severability.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision of this Agreement.

8.5. **Agreement Subject to Rights of Bondholders.** This Agreement is subject to the rights of the holders of outstanding bonds of the County.

8.6. **Force Majeure.** If Owner's performance of any obligation or obligations under this Agreement is interrupted, delayed, or prevented by any contingency or cause beyond the control of Owner and which is not directly or indirectly caused by the acts or omissions of Owner's officers, employees or agents, then Owner shall be excused from the performance of any such obligation or obligations during the period of time that Owner is reasonably unable to perform such obligation or obligations as a result of such contingency or cause. Contingencies or causes beyond the control of Owner include, without limitation:

(1) Acts of God, or the public enemy, any natural disaster, war, riot, civil commotion, insurrection, fires, explosions, accidents, floods, and labor disputes or strikes;

(2) To the extent it affects the Owner's ability to perform a non-monetary covenant or obligation under this Agreement:

(a) A change in a governmental law or regulation shall be considered a contingency or cause beyond the control of Owner if Owner complies with the changed or revised law or regulation within the time limits, and in the manner, provided by such changed or revised law or regulation;

(b) A delay occasioned by the fact that supplies or materials are not reasonably available or the fact that a contractor or subcontractor is delayed in performing services and in either case the circumstance is not directly or indirectly caused by the acts or omissions of Owner.

8.8. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constituted, collectively, one agreement. Once all parties to this Agreement have signed a counterpart, this Agreement shall be binding upon all parties in accordance with the terms hereof.

8.9. Recording of Agreement. The parties agree to execute this Agreement in recordable form and that a duplicate of this Agreement shall be recorded in the Official Public Records of the County Clerk of Clay County, Texas.

8.10. Adoption of Agreement. The County agrees that any other taxing unit eligible to enter into agreements relating to the abatement of taxes may adopt all or any portion of this Agreement.

8.11. Further Acts. The parties each agree to cooperate fully with the other and to take such further action and execute such other documents or instruments as necessary or appropriate to implement the terms of this Agreement.

8.12. Reimbursement of Expenses. Owner agrees to reimburse the County for its reasonable and necessary attorney's fees incurred in the negotiation and preparation of this Agreement. Owner agrees to pay such expenses to the County within 30 days of the date it is billed for such expenses by the County.

Attachments:

Exhibit A – copy of *Order Designating the Southwest Clay County Wind Power Reinvestment Zone*

Exhibit B – Description of Improvements

ATTEST:

COUNTY:

Clay County, Texas

\_\_\_\_\_  
Sasha Kelton, County Clerk

By: \_\_\_\_\_  
Kenneth Liggett, County Judge

OWNER:

Triangle Brick Company

By: \_\_\_\_\_

STATE OF TEXAS            )

COUNTY OF CLAY            )

This instrument was acknowledged before me on the \_\_\_\_ day of July, 2014 by Kenneth Liggett, County Judge of Clay County, Texas on behalf of said County.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of July, 2014 by \_\_\_\_\_ of Triangle Brick Company, a North Carolina corporation on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Exhibit A

Order of Commissioners Court of Clay County follows this page.

Exhibit B  
Improvements