

RESOLUTION NO. 32-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH TRITON MESQUITE I, LLC, A TEXAS LIMITED LIABILITY COMPANY AND SNUFFER'S RESTAURANTS, LLC, A TEXAS LIMITED LIABILITY COMPANY, FOR A PROPOSED RESTAURANT TO BE LOCATED AT 3726 TOWNE CROSSING BOULEVARD, MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas ("City") and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Triton Mesquite I, LLC, a Texas limited liability company and Snuffer's Restaurants, LLC, a Texas limited liability company (collectively the "Company"), in connection with the demolishing and building of a new restaurant at the site of the former Hurricane Grill located at 3726 Towne Crossing Boulevard, Mesquite, Texas, a copy of said agreement being attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

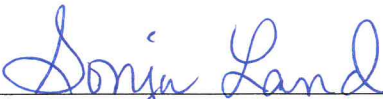
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of August, 2017.



Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

EXHIBIT “A”

**380 Agreement between
The City of Mesquite and
Triton Mesquite I, LLC a Texas limited liability company and
Snuffer’s Restaurants, LLC, a Texas limited liability company**

(to be attached)

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

(Chapter 380 Agreement)

This Economic Development Program Agreement (“Agreement”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the “City”), Triton Mesquite I, LLC, a Texas limited liability company (the “Owner”) and Snuffer’s Restaurants, LLC, a Texas limited liability company (the “Company”) for the purposes and considerations stated below:

W I T N E S S E T H:

WHEREAS, all capitalized terms used herein shall have the meanings set forth in this Agreement; and

WHEREAS, the Owner owns the property commonly known as 3726 Towne Crossing Blvd., Mesquite, Texas, and being more particularly described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (the “Land”); and

WHEREAS, a vacant structure is currently located on the Land; and

WHEREAS, the Owner is in the business of owning and developing rental property and leasing the same to operating companies; and

WHEREAS, the Owner has leased the Land and the building being constructed thereon to the Company which is in the business of operating a retail restaurant establishment commonly known as “Snuffers” (the “Company’s Business”); and

WHEREAS, the Owner and the Company are considering redeveloping the Land by demolishing the existing vacant structure and constructing a new restaurant building consisting of approximately 6,150 square feet of indoor space and approximately 1,500 square feet of outdoor patio space (the “Building”); and

WHEREAS, the Land and Building are hereinafter sometimes collectively referred to as the “Mesquite Facility”; and

WHEREAS, the Building improvements, and the equipment and business personal property to be installed at the Mesquite Facility for the operation of the Company’s Business, will add value to the City’s tax rolls thereby increasing the ad valorem real and personal property taxes assessed and collected by the City; and

WHEREAS, the operation of the Company’s Business at the Mesquite Facility will create new employment opportunities in the City and will increase the sales/use taxes assessed and collected by the City; and

WHEREAS, the Owner and the Company have advised the City that a contributing factor inducing the Company to redevelop the Land by demolishing the existing vacant structure and constructing the new Building is the agreement by the City to provide the Economic Development Incentives more fully set forth in this Agreement upon the terms and subject to the conditions more fully set forth in this Agreement; and

WHEREAS, the City has established an Economic Development Program pursuant to §380.001 of the Texas Local Government Code (“the “Program”) and authorizes this Agreement as part of the Program; and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations set forth in this Agreement will increase the amount of ad valorem taxes and local sales/use taxes paid to and collected by the City, promote employment, promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

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 and confessed, the parties agree as follows:

ARTICLE I

Incorporation of Recitals

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered a part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II

Definitions

As used herein, the following terms shall have the following meanings, to-wit:

“Additional Municipal Sales/Use Taxes” shall mean all sales and use taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, and shall specifically include all Type B Sales/Use Taxes, Property Tax Relief Taxes and all sales and use taxes now and hereafter prohibited by law from being used for payment of economic development incentives.

“Agreement” shall mean this agreement together with all exhibits attached hereto.

“Building” shall have the meaning set forth in the recitals to this Agreement.

“Capital Improvements” shall have the meaning set forth in Article VI, Section 1 of this Agreement.

“Capital Investment” shall have the meaning set forth in Article VI, Section 2 of this Agreement and shall include only expenditures capitalized as capital assets on the books of the Owner and/or the Company in accordance with generally accepted accounting principles.

“Capital Investment Certificate” shall have the meaning set forth in Article VI, Section 2 of this Agreement.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that all Conditions Precedent have been satisfied and are then continuing; and (ii) that no Default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement.

“Certificate of Occupancy” shall mean a final certificate of occupancy issued to the Company by the City authorizing the Company to operate a retail restaurant establishment at the Mesquite Facility.

“City” shall mean the City of Mesquite, a Texas home rule municipality.

“City Council” shall mean the governing body of the City.

“City Sales/Use Tax” and “City Sales/Use Taxes” shall mean the municipal sales and use taxes collected by or on behalf of the City for general fund purposes authorized pursuant to §321.101(a) of the Texas Tax Code, as amended and/or replaced, and currently at the rate of one percent (1.0%) pursuant to §321.103(a) of the Texas Tax Code and specifically does not include the State of Texas Sales/Use Taxes and any Additional Municipal Sales/Use Taxes.

“Company” shall mean Snuffer’s Restaurants, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Company Representative” shall mean the Chief Executive Officer, Chief Operating Officer, General Counsel, Chief Financial Officer, Manager or any other duly authorized officer of the Company acting on behalf of the Company.

“Company’s Business” shall have the meaning set forth in the Recitals to this Agreement.

“Condition Precedent” and “Conditions Precedent” shall have the meanings set forth in Article VII of this Agreement.

“Default” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Defaulting Party” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Economic Development Incentive” shall mean the incentive described in Article VIII, Section 1.

“Effective Date” shall mean the date the Owner, the Company and the City execute this Agreement if each such party execute this Agreement on the same date. If the Owner, the Company and/or the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the dates this Agreement is executed by the Owner, the Company and the City.

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

“Incentive Period” shall mean the period commencing with April 1, 2018 and continuing until the earlier of: (i) April 1, 2023; or (ii) the date the Economic Development Incentive payments paid by the City to the Company under the terms of this Agreement collectively equal \$100,000.00.

“Investment Period” shall mean the period commencing with the Effective Date and continuing until and including March 31, 2018.

“Land” shall have the meaning set forth in the recitals to this Agreement.

“Maximum Incentive Amount” shall mean the collective sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00).

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Mesquite Facility” shall have the meaning set forth in the recitals to this Agreement.

“Net City Sales/Use Taxes” shall mean the City Sales/Use Taxes collected by or on behalf of the City less the two percent (2%) collection fee retained by the State Comptroller and less any credits for returned items.

“Non-Defaulting Party” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Owner” shall mean Triton Mesquite I, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Owner’s Representative” shall mean the Chief Executive Officer, Chief Operating Officer, General Counsel, Chief Financial Officer, Manager or any other duly authorized officer of the Company acting on behalf of the Company.

“Party” shall mean either the Owner, the Company or the City.

“Parties” shall mean each of the Owner, the Company and the City.

“Payment Request” and “Payment Requests” shall mean written request(s) executed by a duly authorized Company Representative requesting an Economic Development Incentive payment.

“Person” or “Persons” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

“Program” shall have the meaning set forth in the recitals to this Agreement.

“Property Tax Relief Taxes” shall mean the municipal sales and use taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent to be used to reduce the property tax rate of the City.

“State Comptroller” shall mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

“State of Texas Sales/Use Taxes” shall mean the State of Texas sales and use taxes, currently at the rate of six and one-quarter percent (6.25%), authorized, adopted, imposed and/or collected pursuant to §151.051 of the Texas Tax Code, as amended and/or replaced, and all other sales and use taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the State of Texas.

“Term” shall have the meaning set forth in Article IV of this Agreement.

“Type B Sales/Use Taxes” shall mean the municipal sales and use taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent, for use by the Mesquite Quality of Life Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced, and shall also include any other sales and use taxes now or hereafter authorized, adopted, imposed and/or collected by or on behalf of the City for use by any other Type B economic development corporation hereafter created by or on behalf of the City.

“Unconfirmed Sales/Use Tax Payment” shall have the meaning set forth in Article VIII, Section 4 of this Agreement.

“Undocumented Workers” shall mean individuals who, at the time of employment with the Company, are not: (i) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other Persons as are included within the definition of undocumented workers pursuant to 8 U.S.C. §1324a (f) or any other applicable law or regulation.

ARTICLE III

Authority for Agreement

This Agreement is authorized by Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the performance by the Owner and the Company of the obligations herein will: (i) increase the amount of ad valorem and sales/use taxes assessed and collected by the City; (ii) result in employment opportunities being created in the City; (iii) promote local economic development in the City, stimulate business and commercial activity in the City; and (iv) benefit the City and its citizens.

ARTICLE IV

Term

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) one hundred and eighty (180) days after the end of the Incentive Period; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the “Term”).

ARTICLE V

Company’s Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby

covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentive payment under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f), the Company shall pay to the City, not later than the 120th day after the date the City notifies the Company of the violation, an amount equal to the total amount of all Economic Development Incentive payments previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each such Economic Development Incentive payment being recaptured from the date each such Economic Development Incentive payment was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentives to the Company if the Company, or any branch, division or department of the Company is convicted of a violation under 8 U.S.C. §1324a (f).

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Owner and the Company and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Owner's and Company's Additional Covenants

Owner's and Company's Additional Covenants. In consideration of the City's agreement to grant the Economic Development Incentive to the Company upon the terms and subject to the Conditions Precedent and limitations more fully set forth herein, the Owner and the Company covenant and agree to comply with each and every one of the following covenants during the Term of this Agreement, to-wit:

1. Capital Improvements. During the Investment Period, the Owner and the Company will construct the Building consisting of approximately 6,150 square feet of indoor space and approximately 1,500 square feet of outdoor patio space substantially as described and/or depicted in **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "Capital Improvements");

2. Capital Investment. During the Investment Period, the Owner and the Company will make expenditures in the amount of at least FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) in connection with the Capital Improvements (the "Capital Investment"). Within sixty (60) days after the last day of the Investment Period, the Owner and/or the Company shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by an Owner Representative or a Company Representative, as the case may be, certifying the amount of expenditures made by the Owner and/or the Company in connection with the Capital Improvements as of the last day of the Investment Period (the "Capital Investment Certificate"). When calculating the expenditures required under this Article VI, Section 2, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Owner and/or the Company in accordance with generally accepted accounting principles;

3. Operation of Company Business at the Mesquite Facility. The Owner and the Company shall complete construction of the Building and obtain a Certificate of Occupancy for the Building on or before March 31, 2018, and the Company shall operate the Mesquite Facility as a Snuffer's restaurant during the Incentive Period;

4. Records and Reports. The Owner and/or the Company shall deliver to the City within sixty (60) days after written request, copies of such invoices, paid receipts, payment records, and other documentation as the City may reasonably request to confirm compliance by the Company with the representations, covenants and agreements set forth in this Article VI;

5. Inspection. The Owner and/or the Company shall provide the City, its agents and employees with access to the Mesquite Facility at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Owner and the Company with the representations, covenants and agreements of the Owner and the Company as set forth in this Agreement provided the City has given the Owner or the Company at least seventy-two (72) hours prior written notice of such inspection;

6. Representative of Company to Accompany Inspections. The Owner and/or the Company shall provide a representative of the Company to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VI, Section 5 above;

7. Timely Payment of Taxes. The Owner and/or the Company shall timely pay all ad valorem property taxes assessed against the Land and Building and the Company's business personal property at the Mesquite Facility during the Term of this Agreement prior to the date such taxes become delinquent;

8. Performance of Agreement. The Owner and the Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Owner and the Company, respectively, under the terms of this Agreement; and

9. Performance of Other Agreements. The Owner shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Owner under the terms of all other agreements now or hereafter existing between the Owner and the City and the Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreements now or hereafter existing between the Company and the City.

ARTICLE VII

Conditions Precedent to Payment of Economic Development Incentive

The Owner, the Company and the City hereby expressly acknowledge and agree that the City's obligation to pay any Economic Development Incentive payment under the terms of this Agreement shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (sometimes referred to singularly herein as a "Condition Precedent" and sometimes collectively referred to as the "Conditions Precedent"), to-wit:

1. Payment Request. The Company shall submit a Payment Request to the City for each Economic Development Incentive payment payable pursuant to this Agreement during the timeframe set forth in the chart in Article VIII, Section 2 below. Each such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request.

2. Supporting Documentation Submitted With Payment Request. The Company shall have submitted in support of its Payment Request a listing identifying the following information in connection with such Payment Request:

- the Company's sales/use tax number under which the sales/use tax was remitted;
- the period that the sales/use tax payment was made by the Company;
- the amount of taxable sales made by the Company to its customers at the Mesquite Facility during the period covered by the Payment Request that resulted in the payment by the Company to the City of City Sales/Use Tax, with sufficient supporting documentation in the judgment of the City to confirm the amount of taxable sales made by the Company attributable solely to sales at the Mesquite Facility; and

- the amount of City Sales/Use Taxes paid by the Company to the City during the period covered by the Payment Request that are attributable solely to sales made by the Company to its customers at the Mesquite Facility.

3. Deposit to City's Sales/Use Tax Account. The Company shall have provided to the City documentation satisfactory to the City that local sales/use taxes attributable solely to sale transactions made in connection with the operation of the Company's Business at the Mesquite Facility have been deposited to the City's sales/use tax account, Texas Comptroller of Public Account's Local Authority Code 2057039 (the "City's Sales/Use Tax Account");

4. Verification of Deposit to City's Sales/Use Tax Account. The City has verified the amount of local sales/use taxes deposited to the City's Sales/Use Tax Account that are attributable solely to sale transactions made in connection with the Company's Business at the Mesquite Facility;

5. Confirmation of Receipt of Sales/Use Tax Payments. The City has confirmed that it has received the City's portion of all sales/use tax payment(s) for which the Payment Request is being requested;

6. Capital Investment. The Company and/or the Owner shall have satisfied the obligation to make the Capital Investment by making expenditures in the collective amount of at least FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) in connection with the Mesquite Facility no earlier than the Effective Date and no later than March 31, 2018. When calculating such expenditures, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company and/or the Owner in accordance with generally accepted accounting principles;

7. Capital Investment Certificate. The Company and the Owner shall have submitted to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative and an Owner Representative certifying that the Company and/or the Owner have made expenditures of at least FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) in connection with the Capital Improvements (the "Capital Investment Certificate"). When calculating the expenditures in connection with the Capital Improvements, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Owner and/or the Company in accordance with generally accepted accounting principles;

8. Operation of Company Business at Mesquite Facility. The Owner and the Company shall have completed construction of the Building and shall have obtained a Certificate of Occupancy for the Building on or before March 31, 2018, and the Company shall have operated the Mesquite Facility as a Snuffer's restaurant from March 31, 2018 through the date of the Payment Request;

9. Records and Reports. The Company and/or the Owner, as the case may be, shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by the Company and the Owner with the Conditions Precedent set forth in this Article VII;

10. Timely Payment of Ad Valorem Taxes. The Company and/or the Owner shall have timely paid all ad valorem taxes assessed against the Land and Building and the Company's business personal property at the Mesquite Facility for the period from the Effective Date until and including the date of the Payment Request and the City shall have confirmed the receipt of such tax payments;

11. Performance of this Agreement. The Owner and the Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Owner and/or the Company under the terms of this Agreement and no Default by the Owner or the Company shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by the Owner or the Company under the terms of this Agreement;

12. Performance of Other Agreements. The Owner shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Owner under the terms of all other agreements now and hereafter existing between the Owner and the City, and no default by the Owner under the terms of such agreement(s) shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Owner under the terms of such agreement(s) and the Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreements now and hereafter existing between the Company and the City, and no default by the Company under

the terms of such agreement(s) shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Company under the terms of such agreement(s);

13. Inspection. At the option of the City, the City shall have inspected the Mesquite Facility to confirm the Owner’s and the Company’s compliance with the terms and provisions of this Agreement;

14. Maximum Incentive. The amount of the Economic Development Incentive payment being requested, when added to all previous incentive payments made pursuant to this Agreement, shall not exceed the maximum sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00); and

15. No Conviction for Undocumented Workers. As of the date of the Payment Request, and at all times during the term of this Agreement prior to the Payment Request, the Company shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Company at the Mesquite Facility or at any other branch, division or department of the Company.

16. Survival. The terms, provisions, agreements, covenants, conditions and obligations of the Owner and the Company set forth in Article VII of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VIII

Economic Development Incentives

1. Grant of Economic Development Incentive. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in the amount equal to the lesser of: (i) one hundred percent (100%) of the Net City Sales/Use Taxes paid by the Company to the City in connection with taxable sales made by the Company to its customers at the Mesquite Facility during the Incentive Period; or (ii) the maximum collective amount of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) (the “Economic Development Incentive”).

2. Payment of Economic Development Incentive. Provided the Conditions Precedent and the covenants set forth in this Agreement have been satisfied and are then continuing, and further provided that the Maximum Incentive Amount has not been satisfied, the City will pay the Economic Development Incentive to the Company in up to a maximum of six (6) payments [fewer payments will be paid if the Maximum Incentive Amount is satisfied prior to (6) six payments] as more fully set forth below:

Payment Request Due Date	Period Covered by Payment	Payment Due Date, provided Conditions Precedent have been satisfied and are continuing	Amount of Payment, provided, however, notwithstanding anything contained herein, any Unconfirmed Sales/Use Tax Payments shall be subject to the provisions of Sections 4 and 5 of Article VIII of this Agreement
April 15, 2019	03/31/18 through 12/31/18	June 15, 2019	100% of the Net City Sales/Use Taxes paid by the Company to the City during the period from 3/31/18 through 12/31/18 attributable solely to sales made by the Company to its Customers at the Mesquite Facility
April 15, 2020	1/1/19 through 12/31/19	June 15, 2020	100% of the Net City Sales/Use Taxes paid by the Company to the City during the period from 1/1/19 through 12/31/19 attributable solely to sales made by the Company to its Customers at the Mesquite Facility, provided, however, such sum, together with all previous incentive payments paid, shall not exceed the Maximum Incentive Amount
April 15, 2021	1/1/20 through 12/31/20	June 15, 2021	100% of the Net City Sales/Use Taxes paid by the Company to the City during the period from 1/1/20 through 12/31/20 attributable solely to sales made by the Company to its Customers at the Mesquite Facility, provided, however, such sum, together with all previous incentive payments paid, shall not exceed the Maximum Incentive Amount

April 15, 2022	1/1/21 through 12/31/21	June 15, 2022	100% of the Net City Sales/Use Taxes paid by the Company to the City during the period from 1/1/21 through 12/31/21 attributable solely to sales made by the Company to its Customers at the Mesquite Facility, provided, however, such sum, together with all previous incentive payments paid, shall not exceed the Maximum Incentive Amount
April 15, 2023	1/1/22 through 12/31/22	June 15, 2023	100% of the Net City Sales/Use Taxes paid by the Company to the City during the period from 1/1/22 through 12/31/22 attributable solely to sales made by the Company to its Customers at the Mesquite Facility, provided, however, such sum, together with all previous incentive payments paid, shall not exceed the Maximum Incentive Amount
April 15, 2024	1/1/23 through 3/31/23	June 15, 2024	100% of the Net City Sales/Use Taxes paid by the Company to the City during the period from 1/1/23 through 3/31/23 attributable solely to sales made by the Company to its Customers at the Mesquite Facility, provided, however, such sum, together with all previous incentive payments paid, shall not exceed the Maximum Incentive Amount

3. Funds Available for Payment of Economic Development Incentives. The grant of the Economic Development Incentive payable by the City to the Company as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Economic Development Incentive payments payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Economic Development Incentive payment shall be subject to the City’s appropriation of funds for such purpose to be paid in the budget year for which such Economic Development Incentive payment is to be made. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article VIII, Section 3 shall expressly survive the expiration or termination of this Agreement.

4. Reduction of Payment Request. Notwithstanding anything contained in this Agreement to the contrary, in the event the City is not able to confirm receipt of any sales/use tax payment(s) of the Company by comparing the amounts included on the Company’s Payment Request to the State Comptroller’s detailed confidentiality report listing each tax receipt by month (individually an “Unconfirmed Sales/Use Tax Payment” and collectively the “Unconfirmed Sales/Use Tax Payments”), then the City shall have the right to deny the portion of the Payment Request relating to all Unconfirmed Sales/Use Tax Payments and in such event, the Payment Request shall automatically be reduced by the amount attributed to the Unconfirmed Sales/Use Tax Payments and the Economic Development Incentive payment made to the Company in connection with such Payment Request shall not include the payment of any portion of any sales/use tax claimed to have been paid to the City in connection with such Unconfirmed Sales/Use Tax Payments.

5. Supplemental Payment Request. In the event the City denies any portion of a Payment Request pursuant to Article VIII, Section 4 above, the Company may, within thirty (30) days after such denial, submit a supplemental Payment Request for the portion of the Payment Request that was denied along with documentation evidencing that one or more Unconfirmed Sales/Use Tax Payments were indeed received by the City. If the documentation provided by the Company to the City pursuant to this Article VIII, Section 5 is satisfactory to the City and the City is able to confirm receipt of such previously Unconfirmed Sales/Use Tax Payment(s) and the Maximum Incentive Amount has not been paid, the City will pay the Company an amount equal to one hundred percent (100%) of the Net City Sales/Use Taxes paid to the City in connection with such Unconfirmed Sales/Use Tax Payment(s) within thirty (30) days after the City confirms receipt of the Unconfirmed Sales/Use Tax Payment(s).

6. Limitation on Economic Development Incentives. Notwithstanding anything contained in this Agreement to the contrary, (i) the maximum amount of the Economic Development Incentive payable under the terms of this Agreement is ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00); (ii) once the collective amount of incentive payments payable pursuant to Article VIII, Section 2 above equal \$100,000.00, no further Economic Development Incentive will be due or payable under the terms of this Agreement; (iii) no Economic Development Incentive shall be due and payable for any period prior to March 31, 2018 or after the Incentive Period; and (iv) if the Company owns or operates multiple facilities, only sales taxes collected and paid relating to sales at the Mesquite Facility shall be eligible for inclusion when calculating the Economic Development Incentive. If there is any conflict between this Article VIII, Section 6 and any other term or provision of this Agreement, this Article VIII, Section 6 shall control.

7. Survival. All terms, provisions, covenants, agreements, obligations, rights and remedies of each Party pursuant to this Article VIII shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX

Defaults Recapture of Incentives Remedies

1. Default. A Party shall be in default of this Agreement (the “Defaulting Party”): (i) upon the occurrence of an Event of Bankruptcy or Insolvency of such Party; or (ii) if such Party fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by such Party under the terms of this Agreement and such failure continues for sixty (60) days after written notice by any other Party (the “Non-Defaulting Party”) (each a “Default”).

2. Remedies. Upon the occurrence of a Default by the Owner and/or the Company, the City shall have the right to terminate this Agreement by written notice to the Owner and the Company and shall further have the right to exercise any and/or all other rights and/or remedies available to the City pursuant to the laws of the State of Texas. Upon the occurrence of a Default by the City, the Owner and the Company shall have the right to terminate this Agreement by written notice to the City and shall further have the right to exercise any and/or all other rights and/or remedies available to the Owner and the Company pursuant to the laws of the State of Texas.

3. Non-Payment of Economic Development Incentives. In the event the Owner or the Company is determined by the City to be in Default of this Agreement, the City shall have no obligation to pay any Economic Development Incentive payment to the Company for the year in which the Default occurred and for any subsequent years.

4. Recapture of Economic Development Incentives. In the event this Agreement is terminated by the City pursuant to Article IX, Section 2 above, the City shall have no obligation to pay any further Economic Development Incentive payment to the Company and the Company shall immediately pay to the City, at the City’s address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to fifty percent (50%) of the total amount of all Economic Development Incentive payments previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each such Economic Development Incentive payment being recaptured from the date each such Economic Development Incentive payment was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 4, the Company shall be in breach of this Agreement and the City shall have the right, without further notice to the Company or the Owner, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas to collect such sums.

5. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement.

ARTICLE X

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Owner and the Company hereunder may not be assigned or transferred by the Owner or the Company to any Person without the prior written consent of the City which may be withheld in the City’s sole discretion. In the event the Owner or the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Owner or the Company or the sale, transfer or assignment of a controlling interest in the membership interests of the Owner or the Company shall constitute an assignment of this Agreement and the failure of the Owner or the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Owner and the Company. In the event the Owner or the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation

or the membership interests of a limited liability company or the partnership interests of a partnership that is the Owner's or the Company's general or managing partner shall constitute an assignment of this Agreement and the failure of the Owner or the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Owner and the Company. Furthermore, neither the Owner, the Company, nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Owner or the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by the Owner and the Company and in the event the Owner or the Company attempts to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to terminate this Agreement by written notice to the Owner and the Company.

2. Notices. All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective upon deposit in the United States mail. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

OWNER AND COMPANY: Triton Mesquite I, LLC and
Snuffer's Restaurants, LLC
C/O Firebird Restaurant Group, LLC
1845 Woodall Rodgers Fwy., Suite 1100
Dallas, Texas 75201
Attention: Robert E. Morrison, General Counsel
Bob@firebirdrg.com

CITY: City of Mesquite
1515 N. Galloway Avenue
Mesquite, TX 75149
Attention: City Manager

With a copy to: City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

3. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Owner or the Company to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

4. Remedies Cumulative. Each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

5. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

6. Modification. This Agreement may only be revised, modified or amended by a written document signed by the City, the Owner and the Company. Oral revisions, modifications or amendments are not permitted.

7. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

8. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

9. Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

10. **WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.** THE OWNER, THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

11. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

12. No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

13. No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

14. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

15. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

16. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

17. Authority. Each of the Owner and the Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. Each Party represents and warrants to each other Party that this Agreement has been duly authorized by such Party and that

each Party has the full power and authority to enter into and fulfill its obligations under this Agreement. Each Person signing this Agreement represents that such Person has the authority to sign this Agreement on behalf of the Party indicated.

18. City Council Authorization. This Agreement is authorized by resolution of the City Council approved at a City Council meeting.

19. Usury Savings Clause. The Owner, the Company and City intend to conform strictly to all applicable usury laws. All agreements of the City, the Owner and the Company are hereby limited by the provisions of this Article X, Section 19 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article X, Section 19 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

20. Execution of Agreement by Parties. If this Agreement is not executed by each of the Owner, the Company and the City on or before October 7, 2017, this Agreement will be null and void and of no force or effect.

21. Form 1295 Certificate. The Owner and the Company each agree to comply with Texas Government Code, Section 2242.908 and in connection therewith, the Owner and the Company each agree to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agree to print the completed certificate, execute the completed certificate before a notary and the Owner and the Company each hereby agree to provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed and notarized completed Form 1295 Certificate.

22. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

ATTEST:

**CITY OF MESQUITE,
a Texas home rule municipality**

By: _____
Sonja Land
City Secretary

By: _____
Name: Cliff Keheley
Title: City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney or his Designee

OWNER:

Triton Mesquite I, LLC
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date:

COMPANY:

Snuffer's Restaurants, LLC
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date:

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

EXHIBIT A

LEGAL DESCRIPTION

TRACT I: (FEE SIMPLE)

BEING a description of a 1.1437 acre tract of land out of the THEOPHALUS THOMAS LEAGUE SURVEY, ABSTRACT NO. 1461, in the City of Mesquite, DALLAS County, Texas; said 1.1437 acre tract being all of Lot 3B, Block B, of the STEAK & ALE ADDITION, an Addition to the City of Mesquite according to the Replat thereof recorded in Volume 83203, Page 2251, Map Records, DALLAS County, Texas, and being more particularly described as follows:

COMMENCING, at a cut "+" in concrete found on the East Right-of-Way line Towne Crossing Boulevard (60 feet wide), said point being the Northwest corner of said Lot 3A, Block B, of said Steak & Ale Addition; said point being also the Southwest corner of Lot 2A, Block B, Towne Crossing Addition, an Addition to the City of Mesquite according to the Replat thereof recorded in Volume 85081, Page 5143, Map Records, DALLAS County, Texas;

THENCE, South 06 degrees 53 minutes 18 seconds East with said East Right-of-Way line of Towne Crossing Boulevard and the West line of said Lot 3A a distance of 106.00 feet to a 5/8-inch iron rod with "Gonzalez & Schneeberg" yellow plastic cap set for the Southwest corner of said Lot 3A and the Northwest corner of said Lot 3B; said point being also the Point of Beginning;

THENCE, North 83 degrees 06 minutes 42 seconds East, with the common line between said Lots 3A and 3B, a distance of 470.00 feet to a 5/8-inch iron rod with "Gonzalez & Schneeberg" yellow plastic cap set for the Southeast corner of said Lot 3A and the Northeast corner of said Lot 3B; said point being on the West Right-of-Way line of Interstate Highway No. 635 (L.B.J. Freeway) (variable width at this point);

THENCE, South 06 degrees 53 minutes 18 seconds East, with said West Right-of-Way line of Interstate Highway No. 635, a distance of 106.00 feet to a 1/2-inch iron rod found for the Southeast corner of said Lot 3B; said point being also the Northeast corner of Lot 3C, Block B, Towne Crossing Addition, an Addition to the City of Mesquite according to the Replat thereof recorded in Volume 93108, Page 5772, Map Records, DALLAS County, Texas;

THENCE, South 83 degrees 06 minutes 42 seconds West, with the common line between said Lots 3B and 3C, a distance of 470.00 feet to a cut "X" in concrete set for the Southwest corner of Lot 3B and the Northwest corner of Lot 3C said point being also on said East Right-of-Way line of Towne Crossing Boulevard;

THENCE, North 06 degrees 53 minutes 18 seconds West, with said East Right-of-Way line of Towne Crossing Boulevard, a distance of 106.00 feet to the POINT OF BEGINNING; CONTAINING 49,820 square feet or 1.1437 acres of land, more or less.

SAVE AND EXCEPT that portion condemned by the State of Texas in Condemnation Proceedings in the County Court of DALLAS County, Texas, under Cause Number 06-09201-A, dated December 7, 2007, filed December 17, 2007, recorded in/under County Clerk's File Number 20070448920 of the Real Property Records of DALLAS County, Texas, being more fully described as follows:

BEING a 3,273 square feet tract of land, more or less in the I. Thomas Survey, Abstract No. 1501, DALLAS County, Texas and being a part of Lot 3B, Block B of Steak and Ale Addition, an addition to the City of

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Mesquite, TX
Asst. No. 001240

Mesquite as recorded in Volume 83203, Page 2251 of the Deed Records of DALLAS County, Texas and also being a part of that tract as conveyed to CNL Funding 2000-A, LP as recorded in Volume 2000158, Page 4694 of the Deed Records of DALLAS County, Texas, said 3,273 square feet being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod found on the existing right of way line of Towne Crossing Boulevard at the Northwest corner of said CNL Funding 2000-A, LP tract and also being the Southwest corner of a tract as conveyed to Rockbay Properties III, Ltd. as recorded in Volume 2003236, Page 12719 of said Deed Records, and also being Lot 3A, Block B of said Steak and Ale Addition of said Deed Records;

THENCE North 82 degrees 00 minutes 49 seconds East, along the common line of said CNL Funding 2000-A, LP tract and said Rockbay Properties III, Ltd. tract, a distance of 441.66 feet to a "X" in concrete set for corner on the new right of way line of I.H. 635 and the being the POINT OF BEGINNING;

THENCE North 82 degrees 00 minutes 49 seconds East, along the common line, a distance of 28.34 feet to the Northeast corner of said CNL Funding 2000-A, LP tract, said point also being the Southeast corner of said Rockbay Properties III, Ltd. tract and being on the existing right of way line of I.H. 635;

THENCE South 07 degrees 59 minutes 11 seconds East, along the existing right of way line of I.H. 635, a distance of 106.00 feet to the Southeast corner of said CNL Funding 2000-A, LP, tract, and the Northeast corner of a tract of land conveyed to Matco Investments as recorded in Volume 92207, Page 524 of said Deed Records, from which a 1/2 inch iron rod found bears South 65 degrees 57 minutes 44 seconds West, a distance of 0.33 feet;

THENCE South 82 degrees 00 minutes 49 seconds West, along the common line of said CNL Funding 2000-A, LP, tract, and said Matco Investments tract and leaving the existing right of way line of I.H. 635, a distance of 32.75 feet to an "+" in concrete set for corner on the new right of way line of I.H. 635 and also being the beginning of a control of access line;

THENCE along the new right of way line of I.H. 635 and a control of access line and along a curve to the left having a central angle of 02 degrees 08 minutes 11 seconds, a radius of 2,845.47 feet, a chord distance of 106.09 feet that bears North 05 degrees 36 minutes 12 seconds West, around said curve an arc distance of 106.10 feet to the end of this control of access line and to the POINT OF BEGINNING and CONTAINING 3,273 square feet (0.0751 acre) of land, more or less.

TRACT 2 (EASEMENT ESTATE)

Non-Exclusive Driveway Easement in and to the herein below described 3 parcels of land created pursuant to the terms of that Collateral Agreement between MAJESTIC JOINT VENTURE IX and STEAK & ALE OF TEXAS, INC., filed September 21, 1983, recorded in Volume 83186, Page 5641, Deed Records, DALLAS County, Texas to-wit:

PARCEL A: (Access Easement Area)

BEING a tract of land out of the THEOPHALUS THOMAS LEAGUE SURVEY, ABSTRACT NO. 1461 in the City of Mesquite, DALLAS County, Texas, and being a part of Lot 3A, Block B, STEAK & ALE ADDITION, an Addition to the City of Mesquite according to the plat thereof recorded in Volume 83203, Page 2251 Map Records, DALLAS County, Texas, and being more particularly described as follows:

BEGINNING at a point on the North line of said Lot 3A, said point being located North 83 degrees 06 minutes 42 seconds East, along the North line of said Lot 3A, a distance of 35.00 feet from the Northwest corner of said Lot 3A, a point for corner;

THENCE North 83 degrees 06 minutes 42 seconds East, continuing along the North line of said Lot 3A, a distance of 24.00 feet to a point for corner;

THENCE South 06 degrees 53 minutes 18 seconds East, 59.00 feet East of and parallel with the East Right-of-Way line of Towne Crossing Boulevard, 106.00 feet to a point for corner on the North line of said Lot 3B;

THENCE South 83 degrees 06 minutes 42 seconds West, with the common line between said Lots 3A and 3B a distance of 24.00 feet to a point for corner;

THENCE North 06 degrees 53 minutes 18 seconds West, 35.00 feet East of and parallel with the East Right-of-Way line of Towne Crossing Boulevard, a distance of 106.00 feet to the POINT OF BEGINNING, CONTAINING 2,544 square feet of land, more or less.

PARCEL B: (Southern Driveway Access Entrance Area)

BEING a tract of land out of the THEOPHALUS THOMAS LEAGUE SURVEY, ABSTRACT NO. 1461, in the City of Mesquite, DALLAS County, Texas, and being a part of Lot 3C, Block B, TOWNE CROSSING ADDITION, an Addition to the City of Mesquite according to the plat thereof recorded in Volume 93108, Page 5772, Map Records, DALLAS County, Texas, and being more particularly described as follows:

BEGINNING at a point in the East Right-of-Way line of Towne Crossing Boulevard (60 foot wide), said point being located South 06 degrees 53 minutes 18 seconds East, along the East line of Towne Crossing Boulevard, a distance of 227.00 feet from the Northwest corner of said Lot 3A, Block B, a point for corner;

THENCE North 06 degrees 53 minutes 18 seconds West, with the East Right-of-Way line of Towne Crossing Boulevard, a distance of 15.00 feet to a "+" cut in concrete set for the Northwest corner of said Lot 3C and the Southwest corner of said Lot 3B;

THENCE North 83 degrees 06 minutes 42 seconds East, with the common line between said Lots 3B and 3C, a distance of 59.00 feet to a point for corner;

THENCE South 06 degrees 53 minutes 18 seconds East, a distance of 15.00 feet to a point for corner;

THENCE South 83 degrees 06 minutes 42 seconds West, a distance of 59.00 feet to the POINT OF BEGINNING; CONTAINING 885 square feet of land, more or less.

PARCEL C: (Northern Common Access Entrance Area)

BEING a tract of land out of the THEOPHALUS THOMAS LEAGUE SURVEY, ABSTRACT NO. 1461 in the City of Mesquite, DALLAS County, Texas, and being a part of Lot 2A, Block B, TOWNE CROSSING, an Addition to the City of Mesquite, according to the plat thereof recorded in Volume 85051, Page 5143, Map Records, DALLAS County, Texas, and part of said Block 3A and being more particularly described as follows:

BEGINNING at a point in the East Right-of-Way line of Towne Crossing Boulevard (60 foot right-of-way), said point being located South 06 degrees 53 minutes 18 seconds East along said East Right-of-Way line of

Towne Crossing Boulevard, a distance of 15.00 feet from the Northwest corner of said Lot 3A, Block B, a point for corner;

THENCE North 06 degrees 53 minutes 18 seconds West, with the East Right-of-Way line of Towne Crossing Boulevard, a distance of 30.00 feet to a point for corner;

THENCE North 83 degrees 06 minutes 42 seconds East, a distance of 59.00 feet to a point for corner;

THENCE South 06 degrees 53 minutes 18 seconds East, a distance of 30.00 feet to a point for corner;

THENCE South 83 degrees 06 minutes 42 seconds West, a distance of 59.00 feet to the POINT OF BEGINNING; CONTAINING 1,170 square feet of land, more or less.

Note: The Company is prohibited from insuring the area or quantity of the Land. Any statement in the legal description contained in Schedule A as to area or quantity of land is not a representation that such area or quantity is correct but is for informal identification purposes and does not override Item 2 of Schedule B hereof.

Filed and Recorded
Official Public Records
John F. Warren, County Clerk
Dallas County, TEXAS
01/09/2013 12:41:48 PM
\$40.00



A handwritten signature in black ink, appearing to be "JFW".

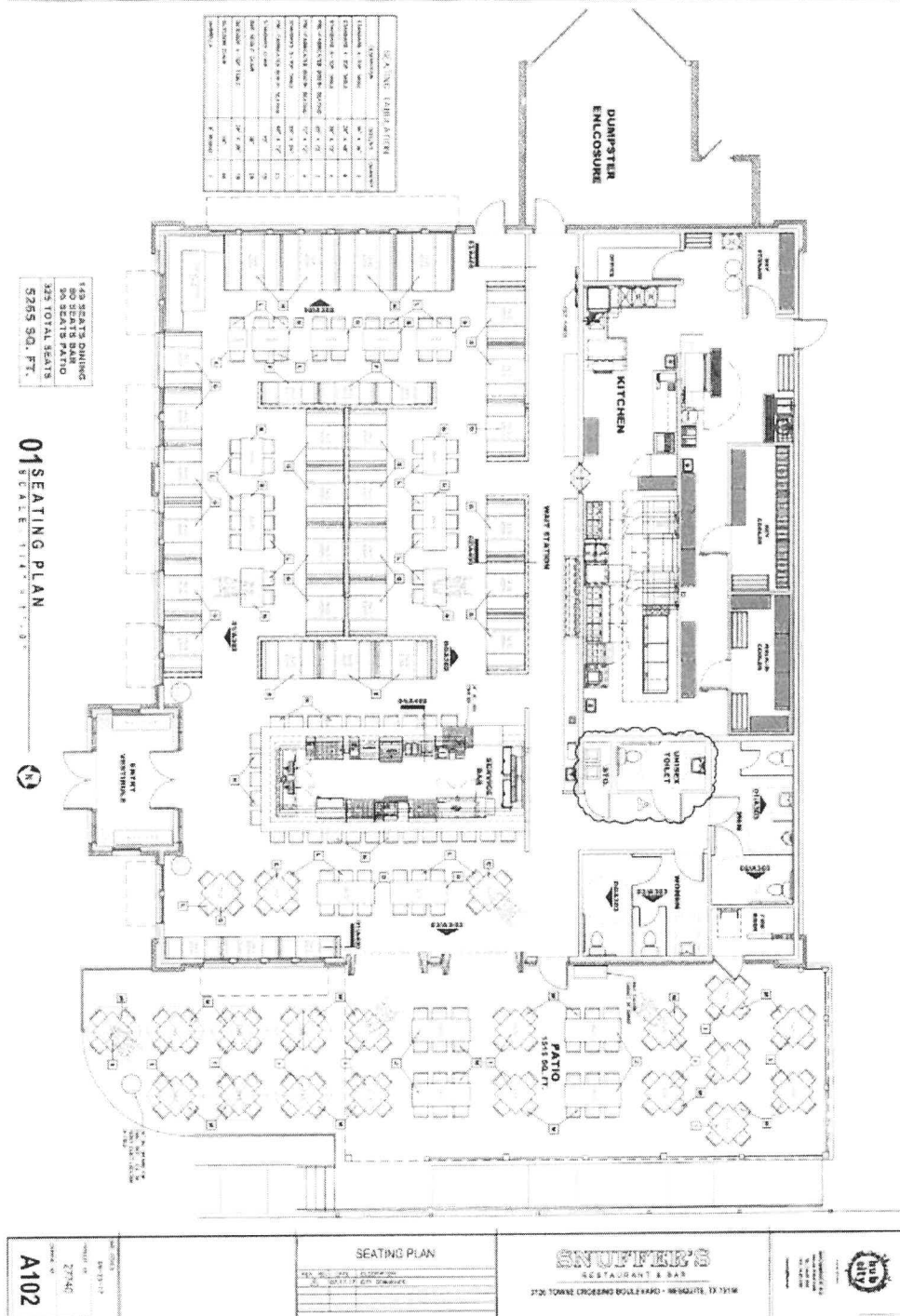
201300007532

Mesquite, TX
Asset No. 001240

7

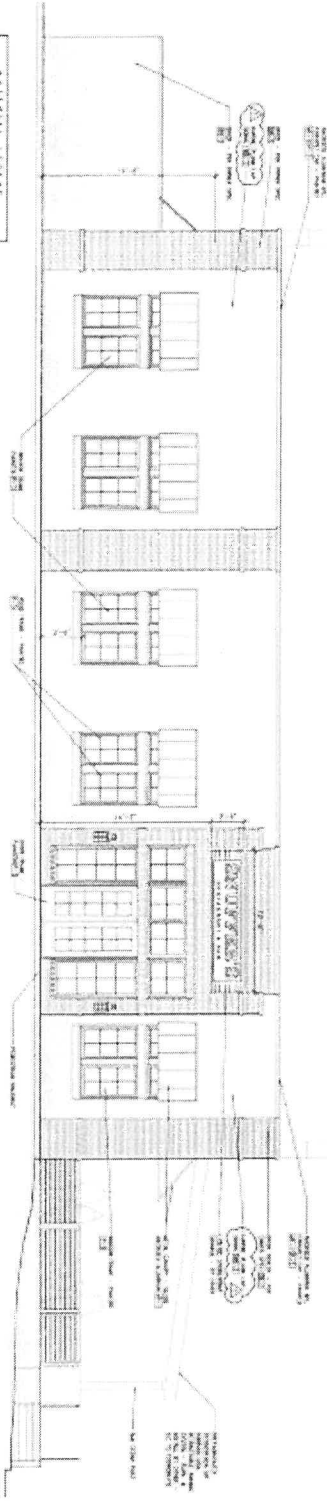
EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Capital Improvements

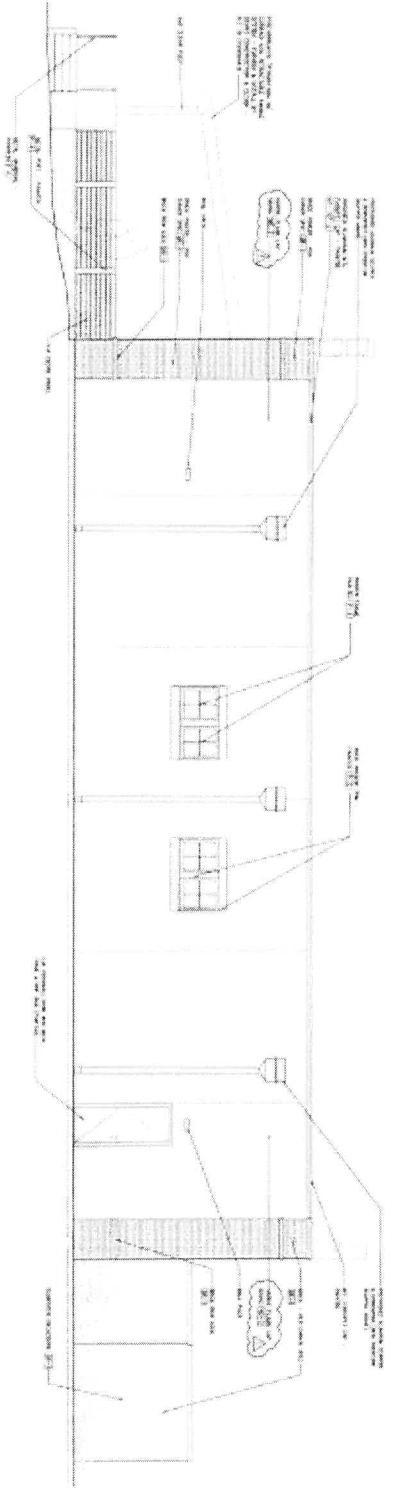


REVISIONS	
NO.	DESCRIPTION
01	ISSUE FOR PERMIT
02	REVISED PER ARCHITECT'S COMMENTS
03	REVISED PER ARCHITECT'S COMMENTS
04	REVISED PER ARCHITECT'S COMMENTS
05	REVISED PER ARCHITECT'S COMMENTS

01 NORTH ELEVATION
SCALE: 1/8" = 1'-0"



02 SOUTH ELEVATION
SCALE: 1/8" = 1'-0"



EXTERIOR ELEVATIONS

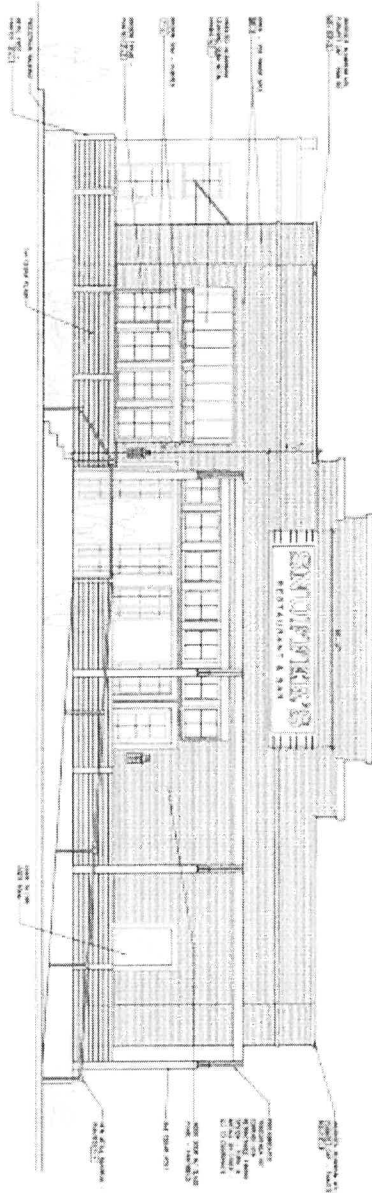
NO.	DATE	DESCRIPTION
01	07/17/10	ISSUE FOR PERMIT
02	08/10/10	REVISED PER ARCHITECT'S COMMENTS
03	08/10/10	REVISED PER ARCHITECT'S COMMENTS
04	08/10/10	REVISED PER ARCHITECT'S COMMENTS
05	08/10/10	REVISED PER ARCHITECT'S COMMENTS

SNUFFER'S
RESTAURANT & BAR

3732 TAMM CROSSING BOULEVARD - MESAQUITE, TX 75158

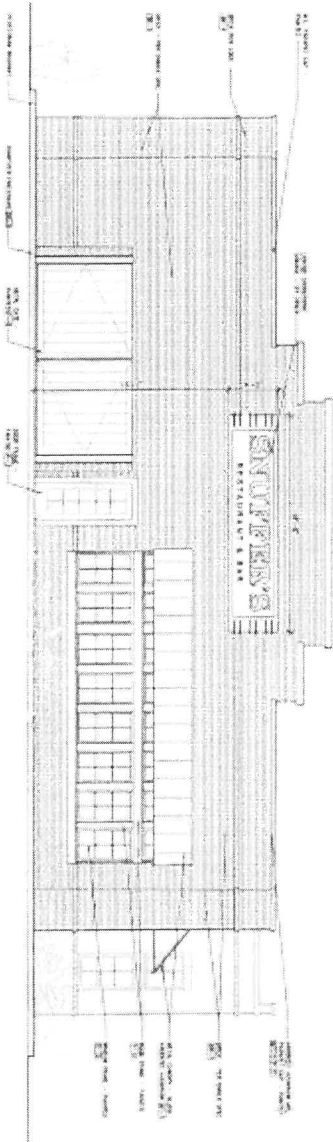


PROJECT NO: 27740
DRAWING NO: A300



03 WEST ELEVATION
SCALE: 1/8" = 1'-0"

NO.	REVISION	DATE
1	ISSUE FOR PERMIT	08/14/13
2	REVISED PER COMMENTS	08/14/13
3	REVISED PER COMMENTS	08/14/13
4	REVISED PER COMMENTS	08/14/13
5	REVISED PER COMMENTS	08/14/13
6	REVISED PER COMMENTS	08/14/13
7	REVISED PER COMMENTS	08/14/13
8	REVISED PER COMMENTS	08/14/13
9	REVISED PER COMMENTS	08/14/13
10	REVISED PER COMMENTS	08/14/13
11	REVISED PER COMMENTS	08/14/13
12	REVISED PER COMMENTS	08/14/13
13	REVISED PER COMMENTS	08/14/13
14	REVISED PER COMMENTS	08/14/13
15	REVISED PER COMMENTS	08/14/13



04 EAST ELEVATION
SCALE: 1/8" = 1'-0"



SNUFFLER'S
RESTAURANT & BAR
224 TOWN CROSSING BOULEVARD - MESQUITE, TX 75001

EXTERIOR ELEVATIONS		
NO.	DATE	REVISION

PROJECT NO: 27740
DATE: 08/14/13
DRAWING NO: A301