

RESOLUTION NO. 47-2018

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 G-MAN PROPERTIES, LLC, GARDNER TELECOMMUNICATIONS, LLC, AND THE PICKLE JUICE COMPANY, LLC, FOR A PROPOSED NEW INDUSTRIAL DEVELOPMENT AT 3325 INNOVATIVE WAY, 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 between the City and G-MAN Properties, LLC (the “Company”), Gardner Telecommunications, LLC, and The Pickle Juice Company, LLC, providing economic development incentives to the Company in connection with the construction of a 33,466-square-foot industrial building and a 66,784-square-foot industrial building on an approximately 8.738-acre tract in the SKYLINE INDUSTRIAL VILLAGE 4 REPL ADDITION of the City of Mesquite, Texas, and being commonly known as 3325 Innovative Way, 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 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, the Company, Gardner Telecommunications, LLC, and The Pickle Juice Company, LLC, 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

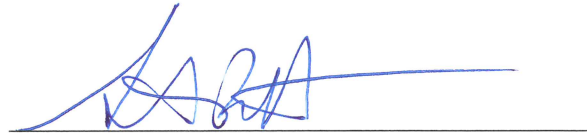
set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

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 4th day of September, 2018.



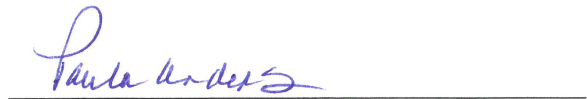
Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



Paula Anderson
Interim City Attorney

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”), G-Man Properties, LLC, a Texas limited liability company (the “Company”), Gardner Telecommunications, LLC, a Texas limited liability company (“GTI”) and The Pickle Juice Company, LLC, a Texas limited liability company (“Pickle Juice”).

WITNESSETH:

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

WHEREAS, the Company is the owner of that certain tract of real property located in the City consisting of approximately 8.738 acres and being commonly known as 3325 Innovative Way, Mesquite, Texas 75149 and being more particularly described in Exhibit “A” attached hereto and made a part hereof for all purposes (the “Land”); and

WHEREAS, GTI is in the business of manufacturing and distributing telecommunication parts and providing telecommunication services (“GTI’s Business”); and

WHEREAS, GTI currently operates its business from a building located at 555 S. Town East Blvd., Mesquite, Texas (the “GTI Town East Location”); and

WHEREAS, GTI desires to expand its business and has requested that the Company construct additional space for GTI to lease from the Company to help facilitate the expansion of GTI’s Business; and

WHEREAS, Pickle Juice is in the business of manufacturing and distributing the Pickle Juice sports drink (“Pickle Juice’s Business”); and

WHEREAS, Pickle Juice currently operates its business from a building located at 206 S. Town East Blvd., Mesquite, Texas 75149 (the “Pickle Juice Town East Blvd. Location”); and

WHEREAS, Pickle Juice desires to expand its business and has requested that the Company construct additional space for Pickle Juice to lease from the Company to help facilitate the expansion of Pickle Juice’s Business; and

WHEREAS, the Company is considering constructing a 33,466 square foot building and a 66,784 square foot building on the Land (collectively the “Buildings”) for the purpose of: (i) leasing a combined total of at least 32,000 square feet of the Buildings to GTI and Pickle Juice in order for GTI to expand GTI’s Business and Pickle Juice to expand Pickle Juice’s Business in the City; and (ii) leasing the remaining portion of the Buildings to other businesses; and

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

WHEREAS, the leased space in the Buildings to be occupied by GTI shall hereinafter be referred to as the “GTI Leased Premises”; and

WHEREAS, the leased space in the Buildings to be occupied by Pickle Juice shall hereinafter be referred to as the “Pickle Juice Leased Premises”; and

WHEREAS, the GTI Town East Location and the GTI Leased Premises shall hereinafter sometimes be collectively referred to as the “GTI Business Locations”; and

WHEREAS, the Pickle Juice Town East Blvd. Location and the Pickle Juice Leased Premises shall hereinafter sometimes be collectively referred to as the “Pickle Juice Business Locations”; and

WHEREAS, the Company has agreed to make a capital investment of at least NINE MILLION AND NO/100 DOLLARS (\$9,000,000.00) in connection with the construction of the Buildings; and

WHEREAS, GTI and Pickle Juice have agreed to make a combined capital investment of at least **THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00)** in connection with the expansion of GTI's Business and Pickle Juice's Business by purchasing and installing new Business Personal Property at the GTI Leased Premises and the Pickle Juice Leased Premises as more fully set forth herein; and

WHEREAS, in connection with the expansion of GTI's Business and Pickle Juice's Business, GTI and Pickle Juice have agreed to employ and retain a combined total of at least **25 New Employees** at the GTI Business Locations and the Pickle Juice Business Locations as more fully set forth herein; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to construct the Buildings and make the capital investment as more fully set forth herein is the agreement by the City to provide the Economic Development Incentives to the Company under the terms and conditions more fully set forth in this Agreement; and

WHEREAS, GTI has advised the City that a contributing factor inducing GTI to make the capital investment and provide additional employment opportunities in the City as more fully set forth herein is the agreement by the City to provide the Economic Development Incentives to the Company under the terms and conditions more fully set forth in this Agreement; and

WHEREAS, Pickle Juice has advised the City that a contributing factor inducing Pickle Juice to make the capital investment and provide additional employment opportunities in the City as more fully set forth herein is the agreement by the City to provide the Economic Development Incentives to the Company under the terms and conditions more fully set forth in this Agreement; and

WHEREAS, the Buildings will substantially increase the taxable value of the improvements on the Land thereby adding value to the City's tax rolls and increasing the ad valorem real property taxes to be collected by the City; and

WHEREAS, the capital expenditures by GTI and Pickle Juice and the agreement of GTI and Pickle Juice to employ and retain a combined total of at least **25 New Employees** at the GTI Business Locations and the Pickle Juice Business Locations as more fully set forth herein will add value to the City's tax rolls, increase the ad valorem personal property taxes to be collected by the City and increase employment opportunities in the City; and

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

WHEREAS, the Company, GTI and Pickle Juice desire 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, GTI's and Pickle Juice's performance of their obligations set forth in this Agreement will 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 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:

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

“Base Employees” shall mean the combined number of Full-Time Employees employed by GTI at the GTI Town East Location and the number of Full-Time Employees employed by Pickle Juice at the Pickle Juice Town East Blvd. Location as of the Effective Date of this Agreement.

“Base Tax Year” shall mean the period beginning with January 1, 2017 and continuing until and including December 31, 2017.

“Base Year Taxable Value” shall mean the valuation of the Land and Buildings as appraised by DCAD [prior to any protest, challenge or appeal] for the first Tax Year that DCAD’s valuation of the Land and Buildings includes the value of the Buildings as completed.

“Base Year Taxes” shall mean the total amount of ad valorem real property taxes paid by the Company to the City for ad valorem taxes assessed against the Land for the Base Tax Year.

“Buildings” shall have the meaning set forth in the Recitals to this Agreement and in Article VII, Section 1 of this Agreement.

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

“Company” shall mean G-Man Properties, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article XII, Section 1 of this Agreement.

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

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

“Company 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 representative of the Company certifying to the City: (i) that all Conditions Precedent to be performed by the Company 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.

“Company Certificates of Occupancy” shall mean certificates of occupancy issued by the City to the Company after the Buildings are compliant with the City’s building, health, safety, fire and other codes and are in a condition suitable for occupancy.

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

“DCAD” shall mean the Dallas Central Appraisal District.

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

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

“Economic Development Incentive” shall mean an incentive described in Article X of this Agreement and “Economic Development Incentives” shall mean more than one or all of the incentives described in Article X of this Agreement.

“Effective Date” shall mean the date the Company, GTI, Pickle Juice and the City execute this Agreement if the Company, GTI, Pickle Juice and the City execute this Agreement on the same date. If the Company, GTI, Pickle Juice and 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 Company, GTI, Pickle Juice and the City.

“Employment Period” shall mean the period beginning with January 1, 2019, and continuing thereafter until and including June 30, 2024.

“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.

“Event of Force Majeure” shall mean a major unforeseeable act or event that: (i) prevents a Party from performing its obligations under this Agreement (the “Non-Performing Party”); (ii) is beyond the reasonable control of the Non-Performing Party; (iii) is not caused by any act or omission on the part of the Non-Performing Party or the Non-Performing Party’s officers, agents, representatives, employees, contractors, customers or invitees; and (iv) could not have been prevented or avoided by the exercise by the Non-Performing Party of such reasonable diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An “Event of Force Majeure” must satisfy each of the above requirements and includes the following, to-wit: lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism, temporary work stoppages due to strikes by employees and material shortages due to the inability of the Company to obtain materials from the Company’s suppliers for reasons other than the cost of the materials and civil disturbances. Notwithstanding the foregoing, an “Event of Force Majeure” does not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds.

“Full-Time Employees” shall mean non-temporary full-time paid employees of GTI or Pickle Juice who: (i) have been employed by GTI or Pickle Juice for a minimum of one hundred (100) days over the first six (6) months of their employment, (ii) work a minimum of thirty-two (32) hours per week on average over a calendar year provided, however, for any employee who has been employed by GTI or Pickle Juice for at least six (6) months but less than a full calendar year, such calculation shall be based on such employee’s actual period of employment until such time as such employee shall have been employed by GTI or Pickle Juice for a full calendar year; (iii) are eligible for employee healthcare and other benefits; and (iv) conduct their job duties at the GTI Business Locations or the Pickle Juice Business Locations.

“GTI” shall mean Gardner Telecommunications, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article XII, Section 1 of this Agreement.

“GTI Business Locations” shall have the meaning set forth in the Recitals of this Agreement.

“GTI Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of GTI by a duly authorized representative of GTI certifying to the City: (i) that all Conditions Precedent to be performed by GTI have been satisfied and are then continuing; and (ii) that no Default then exists by GTI 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 GTI under the terms of this Agreement.

“GTI Certificate of Occupancy” shall mean a final certificate of occupancy issued by the City to GTI authorizing GTI to occupy the GTI Leased Premises.

“GTI Leased Premises” shall mean the leased premises consisting of a portion of the Buildings leased by the Company to GTI as contemplated by this Agreement.

“GTI Town East Location” shall have the meaning set forth in the Recitals of this Agreement.

“GTI/Pickle Juice Capital Investment” shall have the meaning set forth in Article VIII, Section 1 of this Agreement and shall include only expenditures capitalized as capital assets on the books of GTI or Pickle Juice in accordance with generally accepted accounting principles.

“GTI/Pickle Juice Capital Investment Certificate” shall have the meaning set forth in Article VIII, Section 1 of this Agreement.

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

“Incentive Payment” and “Incentive Payments” shall mean economic development incentives to be paid by the City to provide grants to the Company equivalent to the rebate or refund of a portion of the increase in ad valorem taxes over the Base Tax Year paid by the Company to the City attributable to the Land and Buildings for each Incentive Year up to a maximum of five (5) payments as more fully set forth herein, provided, however, in no event shall the collective amount of the Incentive Payments exceed the Maximum Incentive Amount of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00).

“Incentive Period” shall mean the period commencing with January 1, 2019 and continuing thereafter until the earlier of: (i) December 31, 2023; or (ii) the date the Incentive Payments paid by the City to the Company under the terms of this Agreement collectively equal TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00).

“Incentive Year” shall mean a period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1, 2019 and ending on December 31, 2019 and continuing on January 1st and ending on December 31st of each calendar year thereafter during the Incentive Period.

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

“Lease Requirement” shall have the meaning set forth in Article VII, Section 5 of this Agreement.

“Maximum Incentive Amount” shall mean the collective sum of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00).

“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 Facilities” shall have the meaning set forth in the Recitals to this Agreement.

“New Employees” shall mean Full-Time Employees employed by GTI after the date the GTI Certificate of Occupancy is issued to GTI and Full-Time Employees employed by Pickle Juice after the date the Pickle Juice Certificate of Occupancy is issued to Pickle Juice. New Employees shall not include GTI’s or Pickle Juice’s part time employees. “New Employees” shall include any replacement of former New Employees whose employment are terminated for any reason, with such original New Employees and any replacement employees counting as one (1) New Employee for purposes of the calculations in this Agreement.

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

“Party” shall mean either the Company, GTI, Pickle Juice or the City.

“Parties” shall mean the Company, GTI, Pickle Juice and the City.

“Payment Request” shall mean the written request executed by the Company requesting the payment of an annual Incentive Payment as more fully set forth herein.

“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.

“Pickle Juice” shall mean The Pickle Juice Company, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article XII, Section 1 of this Agreement.

“Pickle Juice Business Locations” shall have the meaning set forth in the Recitals to this Agreement.

“Pickle Juice Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of Pickle Juice by a duly authorized representative of Pickle Juice certifying to the City: (i) that all Conditions Precedent to have been performed by Pickle Juice have been satisfied and are then continuing; and (ii) that no Default then exists by Pickle Juice 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 Pickle Juice under the terms of this Agreement.

“Pickle Juice Certificate of Occupancy” shall mean a final certificate of occupancy issued by the City to Pickle Juice authorizing Pickle Juice to occupy the Pickle Juice Leased Premises.

“Pickle Juice Town East Blvd. Location” shall have the meaning set forth in the Recitals to this Agreement.

“Pickle Juice Leased Premises” shall mean the leased premises consisting of a portion of the Buildings leased by the Company to Pickle Juice as contemplated by this Agreement.

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

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

“Tax Year” shall mean a period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1st of each calendar year during the Term of this Agreement and continuing until and including December 31st of the same calendar year.

“Temporary Periods” as used herein shall mean one or more periods of time when GTI’s continuous operation of GTI’s Business from the GTI Leased Premises or Pickle Juice’s continuous operation of Pickle Juice’s Business from the Pickle Juice Leased Premises is prevented by an Event of Force Majeure provided, however, in no event will any such period exceed nine (9) months.

“Term” shall have the meaning set forth in Article IV 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 Article III, Section 52-a of the Texas Constitution and 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 Company’s, GTI’s and Pickle Juice’s performance of their obligations herein will: (i) increase the amount of real and personal property ad valorem 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) June 30, 2024; 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 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 Economic Development Incentives 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 the amount of each Incentive Payment being recaptured from the date each 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 Incentive 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 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

Agreement Regarding Protest, Challenge or Appeal of Property Valuations

1. Agreement Regarding Protest, Challenge or Appeal of Property Valuations. The Company acknowledges that a material consideration for the City's agreement to enter into this Agreement and to pay the Economic Development Incentives set forth herein is the City's expectation that the completion of construction of the Buildings and the Company Capital Investment will result in substantially increased ad valorem tax revenue for the City. The Company may protest, challenge or appeal the valuation of the Land and Buildings as appraised by DCAD for any Incentive Year during the Term of this Agreement provided, however, in consideration of the City's agreement to enter into this Agreement and grant the Economic Development Incentives under the terms and conditions set forth herein, the Parties agree that if such protest, challenge or appeal results in a reduction in the valuation of the Land and Buildings for such Incentive Year to an amount less than the Base Year Taxable Value, no Incentive Payment will be due or payable by the City to the Company for that Incentive Year.
2. Survival. The terms, provisions, covenants, agreements, conditions, obligations and rights and remedies of each Party pursuant to Article VI of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VII

Company's Additional Covenants

In consideration of the City's agreement to grant the Economic Development Incentives to the Company upon the terms and conditions more fully set forth herein, the Company represents, covenants and agrees as follows, to-wit:

1. Buildings. The Company will construct two new buildings on the Land, one consisting of at least 33,466 square feet and the other consisting of at least 66,784 square feet, substantially as described and/or depicted in **Exhibit "B"** attached hereto and made a part hereof for all purposes (collectively the "Buildings");
2. Capital Investment. The Company will make expenditures in the amount of at least NINE MILLION AND NO/100 DOLLARS (\$9,000,000.00) in connection with the construction of the Buildings (the "Company Capital Investment"). Within sixty (60) days after completion of construction of the Buildings, the Company shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by a representative of the Company certifying the amount of expenditures made by the Company in connection with the construction of the Buildings (the "Company Capital Investment Certificate"). When calculating the expenditures required under this Article VII, Section 2, the Company agrees that no expenditure shall be included as part of the Company Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;
3. Completion of Buildings. The Company shall substantially complete the construction of the Buildings on or before December 31, 2018;
4. Certificate of Occupancy for the Buildings. The Company shall obtain Company Certificates of Occupancy for the Buildings on or before December 31, 2018;
5. Building Leases. The Company shall lease a combined total of at least 32,000 square feet of the Buildings to GTI and Pickle Juice for primary terms of at least five (5) years with commencement dates of no later than July 1, 2019 (collectively the "Lease Requirement"). The Company shall provide a copy of the lease executed by the Company and GTI and a copy of the lease executed by the Company and Pickle Juice to the City on or before the date the Company submits its first Payment Request;
6. Timely Payment of Development Fees. The Company shall timely pay to the City all impact fees, permit fees, development fees, review fees, inspection fees and all other fees in connection with the construction of the Buildings;
7. Records and Reports. The Company shall deliver to the City within thirty (30) 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 VII;
8. Inspection. The Company shall provide the City, its agents and employees with access to the Mesquite Facilities 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 Company with the representations, covenants and agreements of the Company as set forth in this Agreement provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection;
9. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Mesquite Facilities conducted by the City pursuant to Article VII, Section 8 above;
10. Timely Payment of Company Taxes. The Company shall timely pay all ad valorem taxes assessed against all property owned by the Company in the City during the Term of this Agreement prior to the date such taxes become delinquent;
11. Maintenance Obligations. The Company shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall maintain the Mesquite Facilities in good repair at all times during the Term of this Agreement;

12. Compliance with Laws. The Company shall comply with all federal, state and local laws, ordinances and regulations relating to the ownership and operation of the Mesquite Facilities during the Term of this Agreement;

13. Performance of Agreement by the Company. 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 this Agreement; and

14. Performance of Other Agreements by the Company. 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 City and the Company.

ARTICLE VIII

Covenants of GTI and Pickle Juice

In consideration of the City's agreement to grant the Economic Development Incentives to the Company upon the terms and conditions more fully set forth herein to induce the Company to construct the Buildings to provide additional lease space for GTI to expand and conduct GTI's Business and for Pickle Juice to expand and conduct Pickle Juice's business, GTI and Pickle Juice each represent, covenant and agree as follows, to-wit:

1. GTI/Pickle Juice Capital Investment. GTI and Pickle Juice will make combined expenditures in the amount of at least THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00) in connection with the purchase and installation of Business Personal Property at the GTI Leased Premises and the Pickle Juice Leased Premises on or before July 1, 2019 (the "GTI/Pickle Juice Capital Investment"). Within sixty (60) days after completion of the installation of such Business Personal Property, GTI and Pickle Juice shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by representatives of GTI and Pickle Juice certifying the amount of expenditures made by GTI in connection with the purchase and installation of Business Personal Property at the GTI Leased Premises and certifying the amount of expenditures made by Pickle Juice in connection with the purchase and installation of Business Personal Property at the Pickle Juice Leased Premises (the "GTI/Pickle Juice Capital Investment Certificate"). When calculating the expenditures required under this Article VIII, Section 1, GTI and Pickle Juice each agree that no expenditure shall be included as part of the GTI/Pickle Juice Capital Investment unless the expenditure is capitalized as a capital asset on the books of GTI or Pickle Juice in accordance with generally accepted accounting principles;

2. Building Leases. GTI and Pickle Juice shall lease a combined total of at least 32,000 square feet of the Buildings from the Company for primary terms of at least five (5) years with commencement dates of no later than July 1, 2019;

3. GTI Certificate of Occupancy. GTI shall obtain the GTI Certificate of Occupancy from the City to occupy the GTI Leased Premises on or before July 1, 2019;

4. Pickle Juice Certificate of Occupancy. Pickle Juice shall obtain the Pickle Juice Certificate of Occupancy from the City to occupy the Pickle Juice Leased Premises on or before July 1, 2019;

5. Operation of GTI's Business. GTI shall operate GTI's Business at the GTI Leased Premises for a period commencing no later than July 1, 2019 and continuing for at least five (5) years thereafter except for such Temporary Periods when GTI's use and occupancy of the GTI Leased Premises is prevented by an Event of Force Majeure;

6. Operation of Pickle Juice's Business. Pickle Juice shall operate Pickle Juice's Business at the Pickle Juice Leased Premises for a period commencing no later than July 1, 2019 and continuing for at least five (5) years thereafter except for such Temporary Periods when Pickle Juice's use and occupancy of the Pickle Juice Leased Premises is prevented by an Event of Force Majeure;

7. New Employees. GTI and Pickle Juice will employ a combined total of at least twenty-five (25) New Employees who conduct their job duties at the GTI Business Locations or the Pickle Juice Business Locations on or before December 31, 2019 and will retain at least 25 New Employees plus the Base Employees at all times

during the Employment Period who conduct their job duties at the GTI Business Locations or the Pickle Juice Business Locations;

8. Records and Reports. GTI and Pickle Juice shall deliver to the City within sixty (60) days after written request, copies of such invoices, paid receipts, payment records, employment records and other documentation as the City may reasonably request to confirm compliance by GTI and Pickle Juice with the representations, covenants and agreements set forth in this Article VIII;

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

10. Pickle Juice Inspection. Pickle Juice shall provide the City, its agents and employees with access to the Pickle Juice Business Locations at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by Pickle Juice with the representations, covenants and agreements of Pickle Juice as set forth in this Agreement provided the City has given Pickle Juice at least seventy-two (72) hours prior written notice

11. Representative of GTI to Accompany Inspections. GTI shall provide a representative of GTI to accompany the City during all inspections of the GTI Business Locations conducted by the City pursuant to Article VIII, Section 9 above;

12. Representative of Pickle Juice to Accompany Inspections. Pickle Juice shall provide a representative of Pickle Juice to accompany the City during all inspections of the Pickle Juice Business Locations conducted by the City pursuant to Article VIII, Section 10 above;

13. Timely Payment of GTI Taxes. GTI shall timely pay all ad valorem taxes assessed against GTI's Business Personal Property located in the City during the Term of this Agreement prior to the date such taxes become delinquent;

14. Timely Payment of Pickle Juice Taxes. Pickle Juice shall timely pay all ad valorem taxes assessed against Pickle Juice's Business Personal Property located in the City during the Term of this Agreement prior to the date such taxes become delinquent;

15. GTI Maintenance Obligations. GTI shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall maintain the GTI Business Locations in good repair at all times during the Term of this Agreement;

16. Pickle Juice Maintenance Obligations. Pickle Juice shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall maintain the Pickle Juice Business Locations in good repair at all times during the Term of this Agreement;

17. Compliance with Laws by GTI. GTI shall comply with all federal, state and local laws, ordinances and regulations relating to the occupancy and operation of GTI's Business at the GTI Business Locations during the Term of this Agreement;

18. Compliance with Laws by Pickle Juice. Pickle Juice shall comply with all federal, state and local laws, ordinances and regulations relating to the occupancy and operation of Pickle Juice's Business at the Pickle Juice Business Locations during the Term of this Agreement;

19. Performance of Agreement by GTI. GTI shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by GTI under the terms of this Agreement;

20. Performance of Agreement by Pickle Juice. Pickle Juice shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Pickle Juice under the terms of this Agreement;

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

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

ARTICLE IX

Conditions Precedent to Payment of Incentive Payments

The Parties agree that the City's obligation to pay any annual Incentive Payment for any Incentive Year 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 have submitted a Payment Request to the City requesting payment of each annual Incentive Payment no earlier than January 1st and no later than February 28th of the calendar year following the Incentive Year for which the annual Payment Request is being requested. Each such annual Payment Request shall be accompanied by a Company Certificate of Compliance, a GTI Certificate of Compliance and a Pickle Juice Certificate of Compliance, all dated effective as of the date of the annual Incentive Payment Request;
2. Certificate of Compliance. The Company Certificate of Compliance, the GTI Certificate of Compliance and the Pickle Juice Certificate of Compliance submitted with the Payment Request shall confirm that the Company, GTI and Pickle Juice have complied with the agreements, covenants, conditions and obligations of the Company, GTI and Pickle Juice under the terms of this Agreement as of the date of the Payment Request;
3. Company Capital Investment. The Company shall have satisfied its obligation to make the Company Capital Investment by making expenditures in the collective amount of at least NINE MILLION AND NO/100 DOLLARS (\$9,000,000.00) in connection with the construction of the Buildings. When calculating such expenditures, the Company agrees that no expenditure shall be included as part of the Company Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;
4. Company Capital Investment Certificate. The Company shall have submitted the Company Capital Investment Certificate to the City and such certificate shall confirm that the Company has complied with Article VII, Section 2 of this Agreement;
5. GTI/Pickle Juice Capital Investment. GTI and Pickle Juice shall have satisfied their obligation to make the GTI/Pickle Juice Capital Investment by making expenditures in the collective amount of at least THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00) in connection with the purchase and installation of Business Personal Property at the GTI Leased Premises and the Pickle Juice Leased Premises. When calculating such expenditures, GTI and Pickle Juice agree that no expenditure shall be included as part of the GTI/Pickle Juice Capital Investment unless the expenditure is capitalized as a capital asset on the books of GTI or Pickle Juice in accordance with generally accepted accounting principles;
6. GTI/Pickle Juice Capital Investment Certificate. GTI and Pickle Juice shall have submitted the GTI/Pickle Juice Capital Investment Certificate to the City and such certificate shall confirm that GTI and Pickle Juice have complied with Article VIII, Section 1 of this Agreement;
7. Completion of the Buildings. The construction of the Buildings shall have been substantially completed on or before December 31, 2018 as evidenced by the issuance by the City of final inspections, final green tags, certificates of completion, or other equivalent, confirming completion of the requirements of the building permits issued by the City in connection with the construction of the Buildings;
8. Payment of Fees. The Company shall have timely paid to the City all impact fees, permit fees, development fees, review fees, inspection fees and all other fees in connection with the construction of the Buildings and the City shall have confirmed receipt of all such fees;

9. Maintenance Obligations. The GTI Business Locations and the Pickle Juice Business Locations shall be in compliance with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of the Payment Request and the Buildings shall be in good repair and condition;
10. Lease of Leased Premises. The Lease Requirement shall have been satisfied and the Company shall have provided the City with: (i) a copy of the executed lease agreement between the Company and GTI evidencing the satisfaction of the Lease Requirement; and (ii) a copy of the executed lease agreement between the Company and Pickle Juice evidencing the satisfaction of the Lease Requirement;
11. Company Certificate of Occupancy. The Company Certificate of Occupancy shall have been issued to the Company on or before December 31, 2018;
12. GTI Certificate of Occupancy. The GTI Certificate of Occupancy shall have been issued to GTI on or before July 1, 2019, and GTI shall have moved into and shall have commenced operating GTI's Business at or from the GTI Leased Premises on or before July 1, 2019;
13. Pickle Juice Certificate of Occupancy. The Pickle Juice Certificate of Occupancy shall have been issued to Pickle Juice on or before July 1, 2019, and Pickle Juice shall have moved into and shall have commenced operating Pickle Juice's Business at or from the Pickle Juice Leased Premises on or before July 1, 2019;
14. Operation of GTI's Business at GTI Leased Premises. GTI shall have operated GTI's Business at the GTI Leased Premises from July 1, 2019 and continuously thereafter until and including the date of the annual Payment Request except for such Temporary Periods when GTI's use of the GTI Leased Premises is prevented by an Event of Force Majeure;
15. Operation of Pickle Juice's Business at Pickle Juice Leased Premises. Pickle Juice shall have operated Pickle Juice's Business at the Pickle Juice Leased Premises from July 1, 2019 and continuously thereafter until and including the date of the annual Payment Request except for such Temporary Periods when Pickle Juice's use of the Pickle Juice Leased Premises is prevented by an Event of Force Majeure;
16. New Employees. GTI and Pickle Juice shall have employed at least 25 New Employees who conduct their job duties at the GTI Business Locations or the Pickle Juice Business Locations on or before December 31, 2019 and at all times during the Employment Period prior to the date of the Payment Request, GTI and Pickle Juice collectively shall have employed and retained the number of employees at least equal to the Base Employees plus 25 New Employees at the GTI Business Locations or the Pickle Juice Business Locations;
17. Reduction in Appraised Values. The combined valuation of the Land and Buildings as originally appraised by DCAD for the Incentive Year for which the Payment Request is being requested shall not have been reduced below the Base Year Taxable Value as a result of a protest, challenge or appeal of the valuations of the Land and Buildings for such Incentive Year;
18. Pending Final Decision of Appraised Valuations. The time for any protest, challenge or appeal of the valuation of the Land and Buildings as appraised by DCAD for the Incentive Year for which the Payment Request is being requested has passed; or, if the Company, or any Person acting on behalf of the Company, has filed a protest, challenge or appeal of the appraised valuation of the Land and Buildings for such Incentive Year, a final, non-appealable administrative order or judicial decision shall have been entered determining the fair market value of the Land and Buildings for such Incentive Year to be an amount equal to or greater than the Base Year Taxable Value;
19. Records and Reports. The Company, GTI and Pickle Juice shall have delivered to the City copies of such invoices, paid receipts, payment records, employment records and such other documentation as the City may reasonably request to confirm compliance by the Company, GTI and Pickle Juice with the Conditions Precedent set forth in this Article IX;
20. Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Mesquite Facilities, GTI shall have timely paid all ad valorem taxes assessed against GTI's Business Personal Property located at the GTI Business Locations and Pickle Juice shall have timely paid all ad valorem taxes assessed against Pickle Juice's Business Personal Property at the Pickle Juice Business Locations as of the date of the Payment Request;

21. Inspection. At the option of the City, the City shall have inspected the GTI Business Locations and the Pickle Juice Business Locations to confirm the Company's, GTI's and Pickle Juice's compliance with the terms and provisions of this Agreement;
22. Performance by the Company of this Agreement. 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 this Agreement and no Default by 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 Company under the terms of this Agreement;
23. Performance by the Company of other Agreements. 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 agreement(s) now and hereafter existing between the Company and the City and no default shall then exist under the terms of such agreement(s) 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);
24. Performance by GTI of this Agreement. GTI shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by GTI under the terms of this Agreement and no Default by GTI shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by GTI under the terms of this Agreement;
25. Performance by GTI of other Agreements. GTI shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by GTI under the terms of all other agreement(s) now and hereafter existing between the GTI and the City and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by GTI under the terms of such agreement(s);
26. Performance by Pickle Juice of this Agreement. Pickle Juice shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Pickle Juice under the terms of this Agreement and no Default by Pickle Juice shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by Pickle Juice under the terms of this Agreement;
27. Performance by Pickle Juice of other Agreements. Pickle Juice shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Pickle Juice under the terms of all other agreement(s) now and hereafter existing between Pickle Juice and the City and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by Pickle Juice under the terms of such agreement(s);
28. No Conviction for Undocumented Workers. As of the date of the Payment Request for the annual Incentive Payment, and at all times during the Term of this Agreement prior to such 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 Facilities or at any other branch, division or department of the Company; and
29. Maximum Incentive Amount. The amount of the Incentive Payment being requested, when added to all previous Incentive Payments paid pursuant to this Agreement, shall not exceed the maximum collective sum of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00).

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

ARTICLE X

Economic Development Incentives

1. Incentive Payments. For each Incentive Year, provided all Conditions Precedent have been satisfied and are then continuing, the City shall pay an Incentive Payment to the Company in the amount calculated by *subtracting* the Base Year Taxes from the total amount of taxes paid by the Company to the City for ad valorem real property taxes assessed against the Land and Buildings for such Incentive Year and multiplying that amount by fifty percent (50%) provided, however, notwithstanding anything contained herein to the contrary, in no event shall the collective amount of Incentive Payments payable under the terms of this Agreement exceed the Maximum Incentive Amount of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00). By way of illustration only, if the Maximum Incentive Amount has not been satisfied [and is not satisfied by the Incentive Payment for the then applicable Incentive Year] and the total amount of ad valorem real property taxes paid by the Company to the City for ad valorem taxes assessed against the Land and Buildings for the then applicable Incentive Year is \$40,000.00 and the Base Year Taxes is \$30,000.00, the amount of the Incentive Payment for such Incentive Year would be \$5,000.00, calculated as follows, to-wit:

$$\$40,000.00 - \$30,000.00 \times 50\% = \$5,000.00.$$

Notwithstanding the foregoing, if the total amount of taxes paid by the Company to the City for ad valorem real property taxes assessed against the Land and Buildings for any Incentive Year are less than the Base Year Taxes, no Incentive Payment will be due or payable by the City to the Company for such Incentive Year.

2. Payment Date for Annual Incentive Payments. Provided all Conditions Precedent have been satisfied and are then continuing, including, without limitation, the Maximum Incentive Amount has not been satisfied, the annual Incentive Payments due and payable pursuant to Article X, Section 1 of this Agreement shall be due and payable by the City to the Company on the later of: (i) April 1st of the calendar year following the Incentive Year for which the annual Incentive Payment is payable; or (ii) sixty (60) days after all Conditions Precedent to the payment of such annual Incentive Payment including, without limitation, the Conditions Precedent set forth in Article IX, Sections 17 and 18 have been satisfied. Any Incentive Payment delayed as a result of the filing of a tax protest, challenge or appeal shall no longer be due and payable in the event that: (i) the fair market value of the Land and Buildings for such Incentive Year is reduced to an amount less than the Base Year Taxable Value; or (ii) the Maximum Incentive Amount is satisfied before the delayed payment date for such Incentive Payment.

3. Funds Available for Payment of Economic Development Incentives. The grants of Economic Development Incentives payable by the City to the Company as more fully set forth in this Agreement are 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 Incentives 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 Incentive Payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Incentive Payment is to be made. The provisions of this Article X, Section 3 shall expressly survive the expiration or termination of this Agreement.

ARTICLE XI

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; (ii) upon any assignment of this Agreement in violation of Article XII, Section 1 of this Agreement; or (iii) 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. In the event of a Default by the Company, GTI or Pickle Juice, the City shall: (i) have no obligation to pay any future Incentive Payment to the Company; (ii) have the right to terminate this Agreement by written notice to the Company, GTI and Pickle Juice; and (3) 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 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 Company pursuant to the laws of the State of Texas.

3. Recapture of Economic Development Incentives. In the event of a Default by the Company, GTI or Pickle Juice under the terms of this Agreement, the Company shall immediately pay to the City, at the City's address set forth in Article XII, 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 all Economic Development Incentives previously paid by the City to the Company pursuant to 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 Incentive Payment being recaptured from the date each 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 XI, Section 3, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Company, GTI or Pickle Juice, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums.

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

ARTICLE XII

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 Company, GTI and Pickle Juice hereunder may not be assigned or transferred by the Company, GTI or Pickle Juice 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 Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Company or the sale, transfer or assignment of a controlling interest in the membership interests of the Company shall constitute an assignment of this Agreement and the failure of 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 Company. In the event GTI is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of GTI or the sale, transfer or assignment of a controlling interest in the membership interests of GTI shall constitute an assignment of this Agreement and the failure of GTI 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 GTI. In the event Pickle Juice is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of Pickle Juice or the sale, transfer or assignment of a controlling interest in the membership interests of Pickle Juice shall constitute an assignment of this Agreement and the failure of Pickle Juice 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 Pickle Juice. Furthermore, neither the Company, GTI or Pickle Juice, 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 Company, GTI, Pickle Juice 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 apply only to the specific transaction authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. The consent by the City to any assignment of this Agreement by the Company shall not relieve the Company from any liabilities or obligations of the Company under the terms of this Agreement prior to such assignment. The consent by the City to any assignment of this Agreement by GTI shall not relieve GTI from any liabilities or obligations of GTI under the terms of this Agreement prior to such assignment. The consent by the City to any assignment of this Agreement by Pickle Juice shall not relieve Pickle Juice from any liabilities or obligations of Pickle Juice under the terms of this Agreement prior to such assignment. Every assignee shall be subject to and 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 assignment in violation of the terms and provisions of this Agreement shall be void and of no force or effect.

2. Notices. Any notice and/or certificate or statement required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered properly given if mailed by United States mail, certified mail, return receipt requested, in a postage paid envelope addressed to the Party at the address set forth below, or by delivering same in person to the intended addressee by hand delivery or by a nationally recognized courier service such as Federal Express or United Parcel Service. Notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether or not actually received, one (1) business day after deposit in the United States mail. Notices by a nationally recognized courier service shall be effective and deemed delivered, whether or not actually received, one (1) business day after deposit with the nationally recognized courier service. Notice by hand delivery shall be effective and deemed delivered 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 each other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: G-Man Properties, LLC
3601 Innovative Way
Mesquite, Texas 75149
Attention: Steve Gardner

GTI: Gardner Telecommunications, LLC
3601 Innovative Way
Mesquite, Texas 75149
Attention: Steve Gardner

PICKLE JUICE: The Pickle Juice Company, LLC
3601 Innovative Way
Mesquite, Texas 75149
Attention: Steve Gardner

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 any one or more of the Company and/or GTI and/or Pickle Juice 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 Company, GTI and Pickle Juice. 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 COMPANY, GTI, PICKLE JUICE AND THE CITY EACH 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. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of Texas, that this Agreement has been duly authorized by the Company, that the Company has authority to enter into and fulfill its obligations under this Agreement and that the person signing this Agreement on behalf of the Company has authority to execute this Agreement and bind the Company. GTI represents that it is duly formed, validly existing and in good standing under the laws of the State of Texas, that this Agreement has been duly authorized by GTI, that GTI has authority to enter into and fulfill its obligations under this Agreement and that the person signing this Agreement on behalf of GTI has authority to execute this Agreement and bind GTI. Pickle Juice represents that it is duly formed, validly existing and in good standing under the laws of the State of Texas, that this Agreement has been duly authorized by Pickle Juice, that Pickle Juice has authority to enter into and fulfill its

obligations under this Agreement and that the person signing this Agreement on behalf of Pickle Juice has authority to execute this Agreement and bind Pickle Juice.

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

19. Usury Savings Clause. The Company, GTI, Pickle Juice and the City intend to conform strictly to all applicable usury laws. All agreements of the City, the Company, GTI and Pickle Juice are hereby limited by the provisions of this Article XII, 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 XII, 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, GTI or Pickle Juice, as applicable, 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. Form 1295 Certificate. The Company, GTI and Pickle Juice agree to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company, GTI and Pickle Juice agree to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agree to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

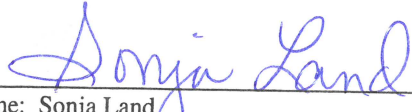
21. Execution of Agreement by Parties. If this Agreement is not executed by the Company, GTI, Pickle Juice and the City on or before October 19, 2018, this Agreement will be null and void and of no force or effect.

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.

[SIGNATURES ON FOLLOWING PAGES]

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.

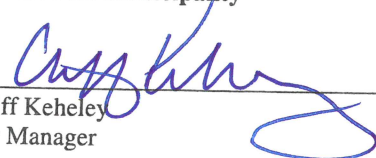
ATTEST:

By: 
Name: Sonja Land
Title: City Secretary

Date: 10.19.18

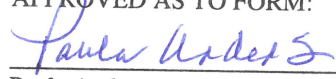
CITY:

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

By: 
Name: Cliff Keheley
Title: City Manager

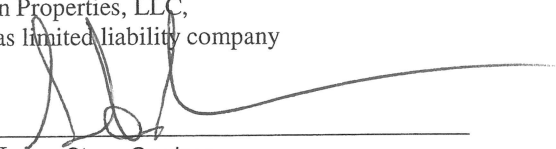
Date: 10/19/18

APPROVED AS TO FORM:


Paula Anderson
Interim City Attorney

COMPANY:

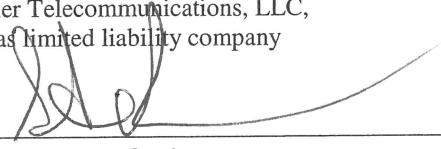
G-Man Properties, LLC,
a Texas limited liability company

By: 
Name: Steve Gardner
Title: President

Date:
August 15, 2018

GTI:

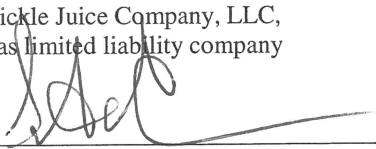
Gardner Telecommunications, LLC,
a Texas limited liability company

By: 
Name: Steve Gardner
Title: President

Date:
August 15, 2018

PICKLE JUICE:

The Pickle Juice Company, LLC,
a Texas limited liability company

By: 
Name: Steve Gardner
Title: President

Date:
August 15, 2018

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

Block H, Lot 3B, Skyline Industrial Village 4 REPL Addition, an Addition to the City of Mesquite, Texas, consisting of approximately 8.738 acres and being commonly known as 3325 Innovative Way, Mesquite, Texas.

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Building Improvements

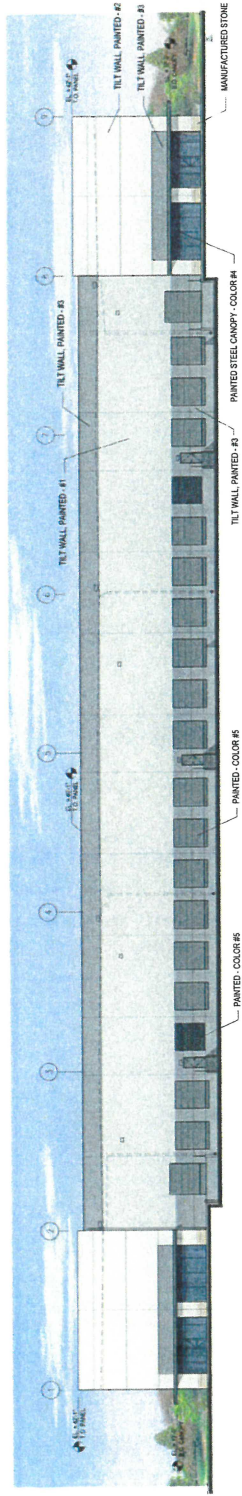
ISSUE LOG	
DATE	DESCRIPTION

REVISION LOG		
NO.	DATE	DESCRIPTION

ISSUED FOR:
 PRELIMINARY
 NOT FOR CONSTRUCTION
 BIDDING / PERMIT
 REVISION / ADDENDUM
 FOR CONSTRUCTION

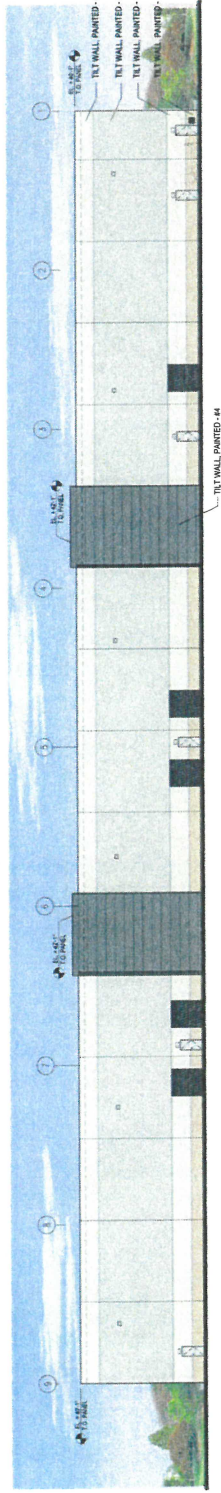
O'BRIEN ARCHITECTS
 5310 HARVEST HILL RD.
 SUITE 136
 DALLAS, TEXAS 75220
 972.786.5100
 www.obrienarch.com

JOHN O'BRIEN - ARCHITECT
 REGISTRATION NO. 4916
 DATE SEAL: 11/07/2014 SCALE: 1/8"=1'-0"
 SHEET NO. **A5.1**
 ELEVATIONS



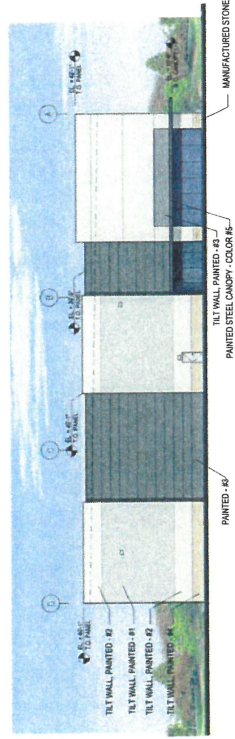
01 EAST ELEVATION - BUILDING 1

SCALE: 1/8" = 1'-0"



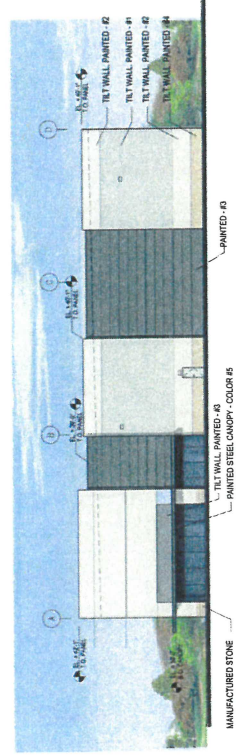
02 WEST ELEVATION - BUILDING 1

SCALE: 1/8" = 1'-0"



03 SOUTH ELEVATION - BUILDING 1

SCALE: 1/8" = 1'-0"



04 NORTH ELEVATION - BUILDING 1

SCALE: 1/8" = 1'-0"

City of Mesquite
 Planning and Development Services
 Site plan and elevations approved
 11/17/2014

ISSUE LOG

NO.	DATE	DESCRIPTION	BY
1	01/24/2019	ISSUED FOR PRELIMINARY REVIEW	JK
2	02/05/2019	ISSUED FOR BIDDING / PERMIT	JK
3	02/26/2019	ISSUED FOR REVISION / ADDENDUM	JK
4	03/13/2019	ISSUED FOR CONSTRUCTION	JK

REVISION LOG

NO.	DATE	DESCRIPTION	BY
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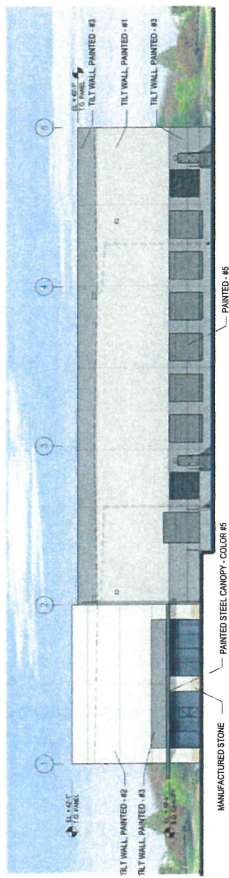
ISSUED FOR:
 PRELIMINARY
 NOT FOR CONSTRUCTION
 BIDDING / PERMIT
 REVISION / ADDENDUM
 FOR CONSTRUCTION

O'BRIEN ARCHITECTS
5310 HARVEST HILL RD.
DALLAS, TEXAS 75230
PHONE: 214.758.1010
WWW.OBRIENARCHITECT.COM

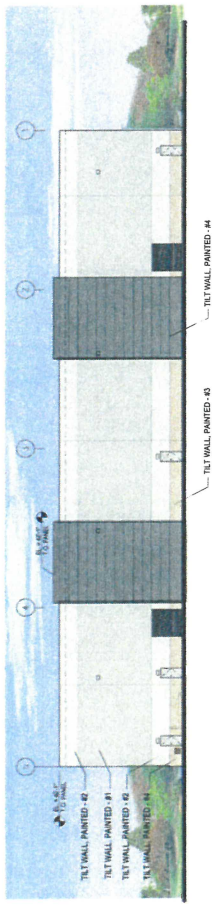
JEAN O'BRIEN - ARCHITECT
REGISTRATION NO. 4818

DATE SCALE	AUTHOR	SCALE
03/2019	JK	1/8" = 1'-0"

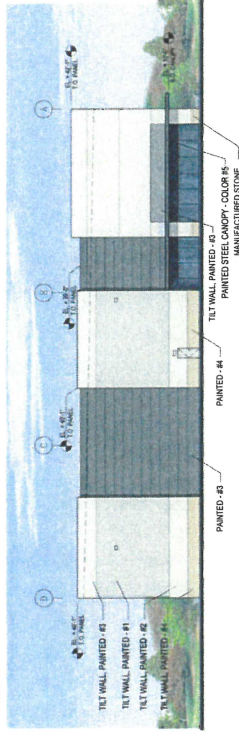
SHEET NO. **A5.2**
ELEVATIONS



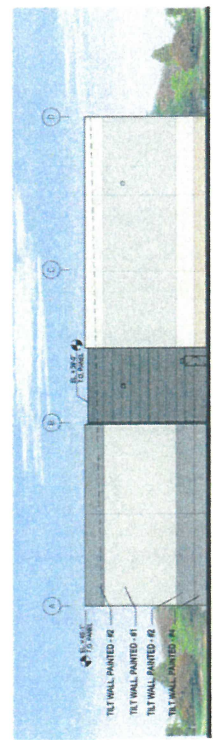
01 EAST ELEVATION - BUILDING 2
SCALE 1/8" = 1'-0"



02 WEST ELEVATION - BUILDING 2
SCALE 1/8" = 1'-0"



03 SOUTH ELEVATION - BUILDING 2
SCALE 1/8" = 1'-0"



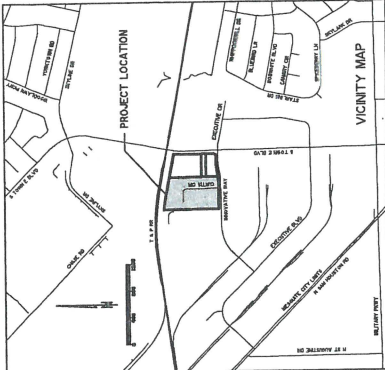
04 NORTH ELEVATION - BUILDING 2
SCALE 1/8" = 1'-0"

NO.	DATE	DESCRIPTION	BY

GMAN PROPERTIES, LLC
 MESQUITE, TEXAS

SITE/PAVING PLAN

PRELIMINARY PLANS FOR PROJECT REVIEW, BIDDING OR PERMIT CONSTRUCTION. Prepared by/for User Direct Supervision of Texas Registration No. 12467/2017 On Date shown Below. COPYRIGHT © WMA WIER & ASSOCIATES, INC. DATE: 04/27/2017 SHEET NO. 04



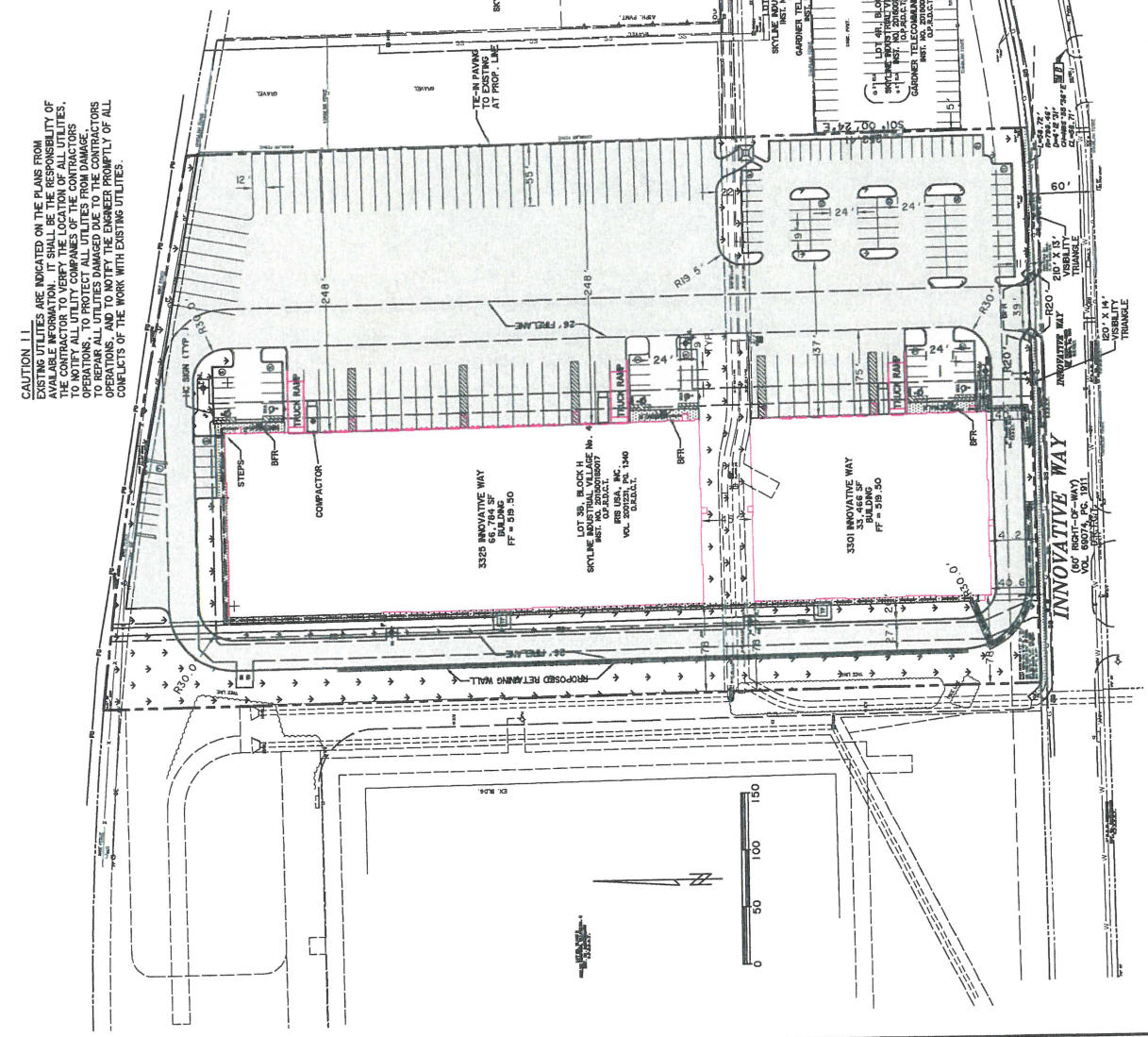
ZONING	INDUSTRIAL/SKYLINE OVERLAY
OCCUPANCY TYPE	WAREHOUSING
FIRE SPRINKLER STATUS	FULLY SPRINKLED
LOT AREA GROSS	(380,644 SF) 8.738 AC
TOTAL NORTH BUILDING AREA (FOOTPRINT)	66,764 SF
REQUIRED PARKING (1 SPACE PER 1000 SF)	62
(1 SPACE PER 300 SF OF OFFICE)	17
TOTAL SOUTH BUILDING AREA (FOOTPRINT)	33,466 SF
REQUIRED PARKING (1 SPACE PER 1000 SF)	31
(1 SPACE PER 300 SF OF OFFICE)	9
PARKING SPACES PROVIDED	119
REQUIRED HANDICAP PARKING	5
HANDICAP PARKING PROVIDED	6
IMPERVIOUS AREA	314,206 SF
OPEN SPACE AREA	66,438 SF
PERCENT LOT COVERAGE (BLDGS)	26.3%
PERCENT OPEN SPACE	17.6%

- GENERAL NOTES:
- ALL COORDINATES ARE TO THE BACK OF CURB, UNLESS NOTED OTHERWISE.
 - DIMENSIONS SHOWN ARE TO THE BACK OF CURB, UNLESS NOTED OTHERWISE.
 - ALL PROPOSED CURB RADI ARE 2.5' B/C, WITHIN PARKING LOT, UNLESS NOTED OTHERWISE.
 - SEE ARCHITECTURAL PLANS FOR BLDG. DIMENSIONS.
 - ALL CONCRETE PAVEMENT SHALL HAVE 6" CURBS UNLESS OTHERWISE NOTED.

- HANDICAP ACCESSIBILITY NOTES:
- CROSS IS ONE ALONG CURB TO BE PROVIDED SHALL NOT EXCEED 2.0% AND COMPLY WITH T.A.S. 402.
 - A MINIMUM 5'x4' FLAT AREA SHALL BE PROVIDED AT EACH DOOR COMPLYING WITH T.A.S. 404 AND SHALL NOT EXCEED 2.0% IN ANY DIRECTION.
 - SEE GRADING PLAN SHEET FOR SPOT GRADES NOTED ON THE CONSTRUCTION OF THE SIDEWALK AND HANDICAP AREAS. CONTRACTOR SHALL INSURE ALL CONSTRUCTION SHALL CONFORM TO ADA/FAS REQUIREMENTS AND NOTIFY PROJECT ENGINEER F DISCREPANCIES ARE FOUND THAT DO NOT COMPLY WITH T.A.S. REQUIREMENTS.
 - CONTRACTOR SHALL CONTACT PROJECT ENGINEER FOR DISCREPANCIES ARE NOTED ON THE T-CURB AREA TO CONSTRUCTION.

- LEGEND
- 5" 3,000 P.S.I. LIGHT DUTY REINFORCED CONCRETE PAVEMENT
 - 6" 3,000 P.S.I. HEAVY DUTY REINFORCED CONCRETE PAVEMENT
 - 7" 4,000 P.S.I. HEAVY DUTY REINFORCED CONCRETE PAVEMENT
 - 4" 3,000 P.S.I. REINFORCED CONCRETE SIDEWALK
 - LANDSCAPE AREA
 - HANDICAP RAMP

REMARKS:
 BILA - AN "X" CUT IN CONCRETE IN THE WEST SIDE OF THE MEDIAN ON THE SOUTH SIDE OF S. TOWN EAST BOULEVARD AND INNOVATIVE WAY. ELEVATION = 504.58 FT.
 BILA - AN "X" CUT IN CONCRETE IN A MEDIAN ON THE SOUTH SIDE OF S. TOWN EAST BOULEVARD AND INNOVATIVE WAY APPROXIMATELY 280 FEET WEST OF THE MEDIAN ON THE SOUTH SIDE OF S. TOWN EAST BOULEVARD. ELEVATION = 506.80 FT.



CAUTION !!!
 EXISTING UTILITIES ARE INDICATED ON THE PLANS FROM AVAILABLE INFORMATION. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE LOCATION OF ALL UTILITIES, TO NOTIFY ALL UTILITIES CONCERNED AND TO TAKE NECESSARY MEASURES TO PROTECT ALL UTILITIES FROM DAMAGE TO REPAIR ALL UTILITIES DAMAGED DUE TO THE CONTRACTOR'S OPERATIONS, AND TO NOTIFY THE ENGINEER PROMPTLY OF ALL CONFLICTS OF THE WORK WITH EXISTING UTILITIES.

City of Mesquite
 Planning and Development Services
 SIB 18407/2017
 04/27/2017