

DEVELOPMENT OF RESTAURANT DID NOT HAPPEN. AGREEMENT WAS NOT EXECUTED.

RESOLUTION NO. 46-2020

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 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) FOR SUCH PURPOSES WITH 321 FIREHOUSE GP LLC (THE OWNER OF THE RESTAURANT) AND FRANK A. GREENHAW (THE LANDLORD OF THE PREMISES WHERE THE RESTAURANT IS TO BE LOCATED) FOR THE DEVELOPMENT OF A RESTAURANT IN DOWNTOWN MESQUITE AT 105 SOUTH BROAD STREET, 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 (the “**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 has a downtown area consisting in part of older buildings with historical significance (“**Downtown Mesquite**”); and

WHEREAS, Downtown Mesquite is in substantial need of redevelopment and revitalization; and

WHEREAS, the City Council has been presented with a proposed agreement between the City, 321 Firehouse GP LLC (the “**Company**”) and Frank A. Greenhaw (the “**Landlord**”) providing economic development incentives to the Company for the development of a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar and performance space for live entertainment at 105 South Broad Street, Mesquite, Texas (the “**Property**”), a copy of said agreement being attached hereto as Exhibit A and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar and performance space for live entertainment in Downtown Mesquite will be a catalyst to: (i) attract new customers and businesses to Downtown Mesquite; (ii) stimulate new, private investment and economic development in Downtown Mesquite; (iii) positively impact the marketability and perception of Downtown Mesquite; (iv) promote development, redevelopment and revitalization of Downtown Mesquite; and (v) stimulate business and commercial activity in Downtown Mesquite; and

WHEREAS, the Company has agreed to lease the Property from the Landlord and make substantial renovations and capital improvements to the interior and exterior of the Property and has agreed to install furniture, trade fixtures and equipment at the Property to transform the Property into a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar and performance space for live entertainment (the “**Restaurant**”); and

WHEREAS, the operation of the Restaurant by the Company at the Property will create new employment opportunities in the City and will increase sales taxes assessed and collected by or on behalf of the City; and

WHEREAS, the Company has represented to the City that the Company will lease the Property and make the investment to open and operate the Restaurant at the Property sooner if the City provides the Economic Development Incentives more fully set forth in the Agreement to the Company under the terms and subject to the conditions more fully set forth in 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; and

WHEREAS, the City Council finds that the Agreement is in the best interest of the City and will benefit the City and its citizens.

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

SECTION 1. The facts, recitations and findings contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Agreement.

SECTION 3. The City Council finds that the Agreement 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 4. 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 5. The terms, provisions 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 6. 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 7. 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 and estoppels required or permitted by the Agreement; (ii) approve or deny any request(s) by the Company to amend the Agreement to extend the date for the Company to obtain a Certificate of Occupancy for the operation of the Restaurant at the Property which, pursuant to the terms of the Agreement, will also extend the CO Date and the Investment Period provided, however, the approval or denial of such request(s) and the extended performance date(s), if approved by the City Manager, shall be in writing and shall be within the sole discretion of the City Manager; (iii) approve any other 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; (iv) approve the Concept Plan and the Building Materials and Aesthetic Methods; (v) 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; (vi) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (vii) exercise any rights and remedies available to the City under the Agreement; and (viii) execute any notices, estoppels, amendments, approvals, consents, denials and waivers authorized by this Section 7 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 7 shall not include the authority to take any action than cannot be delegated by the City Council or that is within the City Council's legislative function.

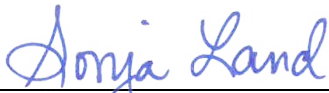
SECTION 8. The sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 21st day of September 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT A

**CHAPTER 380 AGREEMENT BETWEEN
THE CITY OF MESQUITE,
321 FIREHOUSE GP LLC AND
FRANK A GREENHAW**

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*”), 321 Firehouse GP LLC, a Texas limited liability company (the “*Company*”) and Frank A. Greenhaw (the “*Landlord*”).

WITNESSETH:

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

WHEREAS, the City has a downtown area consisting primarily of older buildings with historical significance (“*Downtown Mesquite*”); and

WHEREAS, Downtown Mesquite is in substantial need of redevelopment and revitalization; and

WHEREAS, the Landlord is the owner of that certain real property commonly known as 105 S. Broad Street, Mesquite, Texas 75149, and being more particularly described in **Exhibit A** attached hereto and made a part hereof for all purposes (the “*Land*”), together with: (i) that certain building now located on the Land and containing approximately 4,654 square feet of leasable area (such building, as modified, renovated and remodeled pursuant to the terms of this Agreement being hereinafter referred to as the “*Building*”); and (ii) the outdoor area adjacent to the Building consisting of approximately 1,200 square feet (the “*Patio Area*”) (the Land, Building and Patio Area being hereinafter sometimes collectively referred to as the “*Property*”); and

WHEREAS, the Building is located within Downtown Mesquite; and

WHEREAS, the Company has agreed to lease the Building from the Landlord and make substantial renovations and capital improvements to the interior and exterior of the Building and has agreed to install furniture, trade fixtures and equipment at the Building to transform the Building into a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar, and performance space for live entertainment; and

WHEREAS, the operation of a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar, and performance space for live entertainment at the Property will create new employment opportunities in the City and will increase sales taxes assessed and collected by or on behalf of the City; and

WHEREAS, a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar, and performance space for live entertainment in Downtown Mesquite will be a catalyst to: (i) attract new customers, patrons and businesses to Downtown Mesquite; (ii) stimulate new, private investment and economic development in Downtown Mesquite; (iii) positively impact the marketability and perception of Downtown Mesquite; (iv) promote development, redevelopment and revitalization of Downtown Mesquite; and (v) stimulate business and commercial activity in Downtown Mesquite; and

WHEREAS, the Company has represented to the City that the Company will lease the Property and make the investment to open and operate a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar, and performance space for live entertainment at the Property sooner if the City provides the Economic Development Incentives (as hereinafter defined) to the Company under the terms and subject to the conditions more fully set forth in this Agreement; and

WHEREAS, the investment of public resources in Downtown Mesquite to incentivize a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar, and performance space for live entertainment is for a public purpose and will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens; 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 desires to participate in the Program by entering into this Agreement.

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 (“*Recitals*”) are 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.

“*Annual Grants*” shall have the meaning set forth in Article VIII, Section 1 of this Agreement.

“*Annual Incentive Conditions Precedent*” shall have the meaning set forth in Article VII, Section 2 of this Agreement.

“*Annual Incentive Payment*” and “*Annual Incentive Payments*” shall have the meaning set forth in Article VIII, Section 2 of this Agreement.

“*Building*” shall have the meaning set forth in the Recitals of this Agreement.

“*Building Materials and Aesthetic Methods*” shall have the meaning set forth in Article VI, Section 1 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 General Conditions Precedent have been satisfied and are then continuing; (ii) with respect to any Payment Request for an Annual Incentive Payment, that all Annual Incentive Conditions Precedent have been satisfied and are then continuing; (iii) with respect to any Payment Request for a Quarterly Incentive Payment, that all Quarterly Incentive Conditions Precedent have been satisfied and are then continuing; and (iv) that no Company Default then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement

“*Certificate of Occupancy*” shall mean a final certificate of occupancy issued by the City to the Company authorizing the Company to operate the Restaurant at the Property.

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

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

“*City Default*” shall have the meaning set forth in Article IX, Section 2 of this Agreement.

“*City Manager*” shall mean the City Manager of the City.

“*City Sales/Use Tax*” and “*City Sales/Use Taxes*” shall mean the one percent (1%) 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.

“*City’s Sales/Use Tax Account*” shall have the meaning set forth in Article VII, Section 3(C) of this Agreement.

“*CO Date*” shall mean February 1, 2021, provided, however, if the City Manager extends the date for the Company to obtain a Certificate of Occupancy pursuant to Article VI, Section 5 of this Agreement, the *CO Date* shall mean the date the Company is required to obtain a Certificate of Occupancy as extended in writing by the City Manager.

“*Company*” shall mean 321 Firehouse GP LLC, a Texas limited liability company, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“*Company BPP*” shall mean moveable items of personal property owned by the Company and used in the Company’s ordinary course of business which are located at the Property and used in connection with the operation of the Restaurant but are not permanently affixed to, or part of, the Land or Building and shall consist of machinery, equipment, rack shelving, furniture and inventory provided such items are taxed by the City as business personal property of the Company for ad valorem tax purposes and shall include the items listed on **Exhibit B** attached hereto and made a part hereof for all purposes.

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

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

“*Company Related Party*” shall mean the Company, its officers, members, employees, agents, servants, contractors, subcontractors, customers, and any other Person entering the Property under the express or implied invitation of the Company.

“*Company Representative*” shall mean a duly authorized officer of the Company acting on behalf of the Company.

“*Concept Plan*” shall have the meaning set forth in Article VI, Section 1 of this Agreement.

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

“*Documented Landlord Assignment*” shall have the meaning set forth in Article X, Section 1 of this Agreement.

“*Downtown Mesquite*” shall have the meaning set forth in the Recitals of this Agreement.

“*Economic Covenants*” shall have the meaning set forth in Article VI of this Agreement.

“*Economic Development Incentive*” shall mean an economic development incentive described in Article VIII of this Agreement and “*Economic Development Incentives*” shall mean more than one or all economic development incentives described in Article VIII of this Agreement and shall include the Annual Grants and the Quarterly Grants.

“*Effective Date*” shall mean the later of the dates this Agreement is executed by the City, the Company and the Landlord.

“*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*” as used in this Agreement shall mean a major unforeseeable act or event that: (i) prevents the Company from being open for business to serve customers of the Restaurant; (ii) is beyond the reasonable control of the Company; (iii) is not caused by any act or omission on the part of the Company or any Company Related Party; and (iv) could not have been prevented or avoided by the exercise by the Company of such 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 but is not necessarily limited to the following, to-wit: lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism, civil disturbance, and a governmental order preventing the operation of the Restaurant during a pandemic such as COVID-19. 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.

“**Extended Term**” shall mean the period commencing January 1, 2031, and continuing thereafter until and including the earlier of: (i) December 31, 2037; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate expressly provided herein provided the Lease Extension Requirement is satisfied.

“**General Condition Precedent**” and “**General Conditions Precedent**” shall have the meanings set forth in Article VII, Section 1 of this Agreement.

“**Incentive Period**” shall mean the period commencing with January 1, 2021 and continuing thereafter until the earlier of: (i) December 31, 2030; (ii) the date the Annual Incentive Payments and the Quarterly Incentive Payments paid by the City to the Company under the terms of this Agreement collectively equal SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00); or (iii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein *provided, however*, in the event the Company timely satisfies the Lease Extension Requirement and the Maximum Incentive Amount has not been satisfied, the Incentive Period shall be extended to include the period commencing with January 1, 2031, and continuing thereafter until the earlier of: (a) December 31, 2037; (b) the date the Annual Incentive Payments and the Quarterly Incentive Payments paid by the City to the Company under the terms of this Agreement collectively equal SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00); or (c) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein.

“**Incentive Year**” shall mean the 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, 2021, and ending on December 31, 2021, and continuing on January 1st and ending on December 31st of each calendar year thereafter during the Incentive Period.

“**Initial Term**” shall mean the period commencing with the Effective Date and continuing until and including the earlier of: (i) December 31, 2031; or (ii) the date the Annual Incentive Payments and the Quarterly Incentive Payments paid by the City to the Company under the terms of this Agreement collectively equal SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00); or (iii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate expressly provided herein.

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

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

“**Investment Period**” shall mean the period commencing on the Effective Date and continuing thereafter until and including February 1, 2021 provided, however, if the City Manager extends the date for the Company to obtain a Certificate of Occupancy pursuant to Article VI, Section 5 of this Agreement, the **Investment Period** shall also be extended and shall mean the date the Company is required to obtain a Certificate of Occupancy as extended in writing by the City Manager.

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

“**Landlord**” shall mean Frank A. Greenhaw, his heirs, administrators, legal representatives, successors and assigns.

“**Lease**” shall have the meaning set forth in Article VI, Section 4 of this Agreement.

“**Lease Extension Requirement**” shall have the meaning set forth in Article VII, Section 1(D) of the Agreement.

“**Lease Requirement**” shall have the meaning set forth in Article VI, Section 4 of this Agreement.

“**Maximum Incentive Amount**” shall mean SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00).

“**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).

“**National Holidays**” shall mean New Year’s Day, Martin Luther King Day, President’s Day, Easter, Memorial Day, July 4, Thanksgiving, Christmas Eve and Christmas Day.

“**Net City Sales/Use Taxes**” shall mean the one percent (1%) City Sales/Use Taxes collected by or on behalf of the City and the one-half of one percent (½%) Property Tax Relief Taxes collected by or on behalf of the City for taxable sales by the Company to its customers at the Restaurant less the two percent (2%) collection fee retained by the State Comptroller and less any credits for returned items, and shall specifically not include any State of Texas Sales/Use Taxes, any Type B Sales/Use Taxes and any other taxes now or hereafter prohibited by law from being used for payment of economic development incentives.

“**Patio Area**” shall have the meaning set forth in the Recitals of this Agreement.

“**Party**” shall mean the Company, the Landlord or the City.

“**Parties**” shall mean the Company, the Landlord and the City.

“**Payment Request**” and “**Payment Requests**” shall mean written request(s) executed by a duly authorized Company Representative delivered to the City’s Director of Finance requesting the payment of an Annual Incentive Payment or a Quarterly 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 of this Agreement.

“**Property**” shall have the meaning set forth in the Recitals of this Agreement.

“**Property Tax Relief Taxes**” shall mean the one-half of one percent (½%) 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, to reduce the property tax rate of the City.

“**Quarterly Grants**” shall have the meaning set forth in Article VIII, Section 3 of this Agreement.

“**Quarterly Incentive Condition Precedent**” and “**Quarterly Incentive Conditions Precedent**” shall have the meanings set forth in Article VII, Section 3 of this Agreement.

“**Quarterly Incentive Due Date**” shall have the meaning set forth in Article VII, Section 3(A) of this Agreement.

“**Quarterly Incentive Payment**” and “**Quarterly Incentive Payments**” shall have the meaning set forth in Article VIII, Section 4 of this Agreement.

“**Recitals**” shall have the meaning set forth in Article I of this Agreement.

“**Restaurant**” shall mean a full-service restaurant with indoor and outdoor dining, a bar, patio space, coffee bar, and performance space for live entertainment operated by the Company at the Property.

“**Secretary of the Interior’s Standards for Rehabilitation**” shall mean the following guidelines for rehabilitating properties as established by the United States Secretary of the Interior:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

“**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.

“**TABC**” shall mean the Texas Alcoholic Beverage Commission, and any successor agency.

“**Term**” shall mean the Initial Term unless this Agreement is extended pursuant to Article IV, in which event the “**Term**” of this Agreement shall mean the Initial term, as extended by the Extended Term.

“**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 6 of this Agreement.

“**Undocumented Workers**” shall mean: (i) individuals who, at the time of employment with the Company, are not 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 worker” pursuant to V.T.C.A., Government Code §2264.001(4), as hereafter amended or replaced.

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 performance by the Company of the obligations herein will: (i) increase the amount of sales taxes paid to and collected by or on behalf of the City; (ii) provide new employment opportunities in the City; (iii) be a catalyst to revitalize and redevelop Downtown Mesquite; and (iv) promote local economic development and stimulate business and commercial activity in the City and 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) December 31, 2031; or (ii) the date the amount of Annual Incentive Payments and Quarterly Incentive Payments paid by the City to the Company under the terms of this Agreement equal the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00), collectively; or (iii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the “*Initial Term*”) *provided, however*, in the event the Company timely satisfies the Lease Extension Requirement and the Maximum Incentive Amount has not been satisfied, this Agreement shall be extended to include the period from January 1, 2032, and continuing thereafter until the earlier of: (a) December 31, 2038; or (b) the date the amount of Annual Incentive Payments and Quarterly Incentive Payments paid by the City to the Company under the terms of this Agreement equal the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00), collectively; or (c) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein (the “*Extended 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 Economic Development Incentive being recaptured from the date each Economic Development Incentive 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, provided, however, the Parties agree that the Landlord shall not have any liability for the failure of the Company to comply with Article V of this Agreement.

6. Limitation. Neither the Company or the Landlord is 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, the rights and remedies of the City, and the limitations of liability of the Landlord set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Company's Additional Covenants

In consideration of the City's agreement to grant the Economic Development Incentives to the Company upon the terms and subject to the conditions and limitations more fully set forth herein, the Company agrees to timely keep and perform all of the following covenants during the Term of this Agreement (collectively the "**Economic Covenants**"), to-wit:

1. Company Improvements. On or before the last day of the Investment Period, the Company will make, or cause to be made, the following improvements to the Property: (i) the renovations and improvements set forth on **Exhibit C** attached hereto and made a part hereof for all purposes (the "**Company Improvements**"); (ii) the installation of all interior furnishings and décor for the Restaurant ("**Décor**"); and (iii) the installation of all furniture, trade fixtures and equipment necessary for the Company to operate the Restaurant at the Property including, without limitation, the furniture, trade fixtures and equipment more fully set forth in **Exhibit B** attached hereto and made a part hereof for all purposes. Prior to commencing the construction and/or installation of the Company Improvements, the Company shall submit a concept plan containing the design and proposed layout for the Restaurant (collectively the "**Concept Plan**") as well as the façade, elevations, overlays, aesthetic methods, paint colors, building products and building materials to be used in the construction and installation of the Company Improvements (collectively the "**Building Materials and Aesthetic Methods**") to the City Manager for review and approval;

2. Company Investment. On or before the last day of the Investment Period, the Company shall make, or cause to be made, expenditures in the amount of at least SIX HUNDRED AND EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00) in connection with the Company Improvements, the Decor and the Company BPP (collectively the "**Investment**"). Within sixty (60) days after the last day of the Investment Period, the Company shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the amount of expenditures made by the Company in connection with the Company Improvements, the Décor and the Company BPP as of the last day of the Investment Period (the "**Investment Certificate**");

3. Development of the Restaurant. The Company shall construct and install the Company Improvements on or before the last day of the Investment Period substantially in compliance with: (i) the Secretary of the Interior's Standards for Rehabilitation; and (ii) the Concept Plan and Building Materials and Aesthetic Methods approved in writing by the City Manager;

4. Lease. The Company shall lease the Property for a primary term of at least ten (10) years with a commencement date of no later than February 1, 2021 (the "**Lease Requirement**") and shall deliver a copy of the written lease satisfying the Lease Requirement executed by the Company and the Landlord (the "**Lease**") to the City on or before the date the Company submits the first Payment Request to the City;

5. Certificate of Occupancy. The Company shall obtain a Certificate of Occupancy and commence the operation of the Restaurant at the Property on or before February 1, 2021 provided, however, if the Company is unable for good cause to obtain a Certificate of Occupancy and commence the operation of a Restaurant at the Property on or before February 1, 2021, the Company shall have the option to submit a written request for an extension of the date to obtain a Certificate of Occupancy to the City Manager. The City Manager shall not be obligated to allow an extension but may do so for good cause determined solely in the discretion of the City Manager. An extension of the date to obtain a Certificate of Occupancy, if granted, shall be for no longer than one hundred eighty (180) days and shall be subject to the conditions determined exclusively by the City Manager. The denial by the City Manager of a request for extension pursuant to this Article VI, Section 5, cannot be appealed and shall be final;

6. Restaurant Operations. The Company shall be open for business serving customers of the Restaurant at the Property six (6) days a week for a minimum of six (6) hours per day during the Term of this Agreement except: (i) during the National Holidays; and (ii) during an Event of Force Majeure;

7. Permits and Licenses. Company, at Company's sole expense, shall obtain and maintain at all times from the CO Date and thereafter during the Term of this Agreement, any and all governmental licenses and permits necessary for the operation of the Restaurant at the Property including, without limitation, the Certificate of Occupancy and all licenses required by the TABC authorizing the Company to sell alcohol at the Property;

8. Live Entertainment. The Company shall cause live entertainment to be provided at the Restaurant at least three (3) times each calendar month during the Term of this Agreement;

9. Maintenance Obligations. The Company shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City regarding the use, occupancy and condition of the Building and the operation of the Restaurant at the Property and shall maintain the Building in good repair and condition at all times during the Term of this Agreement;

10. Timely Payment of Taxes. The Company shall timely pay all ad valorem taxes assessed against the Company BPP during the Term of this Agreement prior to the date such taxes become delinquent. The Company or the Landlord shall timely pay all ad valorem property taxes assessed against the Land and Building during the Term of this Agreement prior to the date such taxes become delinquent;

11. Records and Reports. The Company shall deliver to the City within sixty (60) days after written request, copies of such records, reports 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 Agreement;

12. Inspection. The Company shall provide the City, its agents and employees with access to the Property 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;

13. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Property conducted by the City pursuant to Article VI, Section 12 above;

14. Performance of Agreement. 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

15. Performance of Other Agreements. 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 Incentives

1. General Conditions Precedent. The Parties agree the City's obligation to pay each Annual Incentive Payment and each Quarterly Incentive Payment to the Company shall expressly be conditioned upon the satisfaction of the following conditions precedent: (i) as of the date of the Payment Request submitted in connection with such payment; and (ii) as of the date of such payment (collectively the "**General Conditions Precedent**"), to-wit:

A. Company Improvements. The Company Improvements shall have been completed on or before the last day of the Investment Period;

B. Company Investment. The Company Investment shall have been satisfied on or before the last day of the Investment Period;

- C. Development of the Restaurant. The Company shall have constructed and/or installed the Company Improvements on or before the last day of the Investment Period in substantial compliance with: (i) the Secretary of the Interior’s Standards for Rehabilitation; and (ii) the Concept Plan and Building Materials and Aesthetic Methods approved in writing by the City Manager;
 - D. Lease. The Lease Requirement shall have been satisfied and the Company shall have provided a copy of the Lease to the City and, with respect to any Annual Incentive Payment and Quarterly Incentive Payment after the Initial Term, the Company shall have extended the term of the Lease in writing for the Extended Term (the “*Lease Extension*”) and shall have provided a copy of the Lease Extension to the City;
 - E. Certificate of Occupancy. The Company shall have obtained a Certificate of Occupancy and commenced the operation of the Restaurant at the Property on or before the CO Date;
 - F. Personal Property Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Company BPP for the Incentive Year for which the Payment Request is being requested;
 - G. Real Property Taxes. The Company or the Landlord shall have timely paid the ad valorem taxes assessed against the Land and Building for the Incentive Year for which the Payment Request is being requested. If such taxes were paid by the Landlord, the Company shall have reimbursed the Landlord for such ad valorem taxes and shall have provided evidence reasonably satisfactory to the City that the Company has reimbursed the Landlord for such ad valorem taxes;
 - H. Maintenance Obligations. The Building shall be in good repair and condition and shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City;
 - I. Compliance with Laws. The Company shall have complied with all federal, state and local laws, ordinances and regulations relating to the operation of the Restaurant at the Property;
 - J. Performance 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 Company Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement;
 - K. 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);
 - L. Inspection. At the option of the City, the City shall have inspected the Property to confirm the Company’s compliance with the terms, provisions, covenants and conditions of this Agreement;
 - M. Records and Reports. The Company shall have delivered to the City copies of such documentation as the City may reasonably request to confirm compliance by the Company with the covenants, conditions and provisions of this Agreement; and
 - N. No Conviction for Undocumented Workers. 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 Property or at any other branch, division or department of the Company.
2. Additional Conditions Precedent for Payment of Annual Incentive Payments. The payment of each Annual Incentive Payment by the City to the Company shall expressly be conditioned upon the satisfaction of the General Conditions Precedent and the following additional conditions precedent (i) as of the date of the Payment Request submitted in connection with such payment; and (ii) as of the date of such payment (collectively the “*Annual Incentive Conditions Precedent*”), to-wit:

- A. Payment Request. The Company shall submit a Payment Request to the City’s Finance Director at 757 N. Galloway, Mesquite, Texas 75149, or at such other address as the City may hereafter notify the Company in writing, no earlier than January 30th and no later than April 15th of the calendar year following the Incentive Year for which the Payment Request is being made requesting payment of the Annual Incentive Payment then due by the City to the Company pursuant to the terms of this Agreement. For example, the first such Payment Request shall be submitted no earlier than January 30, 2022, and no later than April 15, 2022, for the Annual Incentive Payment for the first Incentive Year [2021], and subsequent Payment Requests for Annual Incentive Payments shall be submitted no earlier than January 30th and no later than April 15th of each calendar year thereafter during the Incentive Period. Each Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request;
- B. Restaurant Operations. The Company shall not have vacated or abandoned the Property and shall have been open for business serving customers of the Restaurant at the Property six (6) days a week for a minimum of six (6) hours per day from the CO Date through and including the date of the Payment Request except: (i) during National Holidays; and (ii) during an Event of Force Majeure; and
- C. Maximum Incentive Amount. The amount of the Annual Incentive Payment being requested, when added to all previous Annual Incentive Payments and all previous Quarterly Incentive Payments paid by the City to the Company pursuant to this Agreement, shall not exceed the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00).

3. Additional Conditions Precedent for Payment of Quarterly Incentive Payments. Each Quarterly Incentive Payment by the City to the Company shall expressly be conditioned upon the satisfaction of the General Conditions Precedent and the following additional conditions precedent (i) as of the date of the Payment Request submitted in connection with such payment; and (ii) as of the date of such payment (collectively the “*Quarterly Incentive Conditions Precedent*”), to-wit:

- A. Payment Request. The Company shall submit a Payment Request to the City’s Finance Director at 757 N. Galloway, Mesquite, Texas 75149, or at such other address as the City may hereafter notify the Company in writing, for each Quarterly Incentive Payment payable pursuant to this Agreement at least forty-five (45) days prior to the date such Quarterly Incentive Payment is due pursuant to Article VIII, Section 4 below (each a “*Quarterly Incentive Due Date*”). If the Company submits a Payment Request less than forty-five (45) days prior to the applicable Quarterly Incentive Due Date, the Quarterly Incentive Due Date shall be extended to forty-five (45) days after the City’s receipt of the Payment Request. If the Company submits a Payment Request on or after the applicable Quarterly Incentive Due Date, the Quarterly Incentive Due Date shall be extended to forty-five (45) days after the City’s receipt of the Payment Request, provided, however, notwithstanding anything contained herein to the contrary, if the Company submits a Payment Request more than one year after the applicable Quarterly Incentive Due Date, the City shall not be obligated to pay the Payment Request. Each such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request;
- B. Supporting Documentation Submitted with Payment Request. The Company shall submit 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 Restaurant during the period covered by the Payment Request that resulted in the payment by the Company to the City of local sales/use taxes, 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 by the Company to its customers at the Restaurant; and
 - the amount of local 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 Restaurant;

- C. 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 by the Company to its customers in connection with the operation of the Restaurant at the Property 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**");
 - D. 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 by the Company to its customers in connection with the Restaurant at the Property;
 - E. 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;
 - F. Restaurant Operations. The Company shall not have vacated or abandoned the Property and shall have been open for business serving customers of the Restaurant at the Property six (6) days a week for a minimum of six (6) hours per day from the CO Date through and including the date of the Payment Request except: (i) during National Holidays; and (ii) during an Event of Force Majeure; and
 - G. Maximum Incentive Amount. The amount of the Quarterly Incentive Payment being requested, when added to all previous Annual Incentive Payments and all previous Quarterly Incentive Payments paid pursuant to this Agreement, shall not exceed the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00).
4. Survival. The terms, provisions, agreements, covenants, conditions and obligations of 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. Annual Economic Development Incentives. Subject to the annual appropriation of funds and provided the Economic Covenants, the General Conditions Precedent and the Annual Incentive Conditions Precedent have been satisfied and are then continuing, the City hereby approves an economic development grant to the Company for each Incentive Year during the Incentive Period (collectively the "**Annual Grants**") from the revenue in the City's general funds in the amount equal to the lesser of: (i) the amount paid by the Landlord and the Company to the City for ad valorem taxes assessed and collected by the City against the Land, Building and Company BPP for such Incentive Year; and (ii) the amount determined by subtracting all Annual Incentive Payments and all Quarterly Incentive Payments previously paid by the City to the Company under the terms of this Agreement from the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00). By way of example only: (i) if the collective amount of all Annual Incentive Payments and all Quarterly Incentive Payments previously paid by the City to the Company under the terms of this Agreement is SIX HUNDRED AND SEVENTY THOUSAND AND NO/100 DOLLARS (\$670,000.00) and the amount of ad valorem taxes paid by the Landlord and the Company for taxes assessed and collected by the City against the Land, Building and Company BPP for an Incentive Year is FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00), the amount of the economic development grant for such Incentive Year shall be TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00); and (ii) if the collective amount of all Annual Incentive Payments and all Quarterly Incentive Payments previously paid by the City to the Company under the terms of this Agreement is THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) and the amount of ad valorem taxes paid by the Landlord and the Company for taxes assessed and collected by the City against the Land, Building and Company BPP for an Incentive Year is FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00), the amount of the economic development grant for such Incentive Year shall be FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00).
2. Payment of Annual Economic Development Incentives. Subject to the annual appropriation of funds and provided the Economic Covenants, the General Conditions Precedent and the Annual Incentive Conditions Precedent have been satisfied and are then continuing, the Annual Grants set forth in Article VIII, Section 1 above shall be payable by the City to the Company in annual payments (referred to herein singularly as an "**Annual Incentive Payment**" and collectively as the "**Annual Incentive Payments**") on the later of: (i) June 30th of the calendar year

following the Incentive Year for which the Annual Incentive Payment is payable; or (ii) sixty (60) days after all General Conditions Precedent and Annual Incentive Conditions Precedent have been satisfied.

3. Quarterly Economic Development Incentives. Subject to the annual appropriation of funds and provided the Economic Covenants, the General Conditions Precedent and the Quarterly Incentive Conditions Precedent have been satisfied and are then continuing, the City hereby approves an economic development grant to the Company from the revenue in the City's general funds in the amount equal to 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 Restaurant during each calendar quarter of the Incentive Period (collectively the "**Quarterly Grants**") provided, however, notwithstanding anything contained herein to the contrary, in no event shall the Annual Grants and the Quarterly Grants payable under the terms of this Agreement exceed the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00), collectively.

4. Payment of Quarterly Economic Development Incentives. Subject to the annual appropriation of funds and provided the Economic Covenants, the General Conditions Precedent and the Quarterly Incentive Conditions Precedent have been satisfied and are then continuing, the Quarterly Grants shall be payable in quarterly installment payments as more fully set forth in this Article VIII, Section 4 (referred to herein singularly as a "**Quarterly Incentive Payment**" and collectively as the "**Quarterly Incentive Payments**"). The Quarterly Incentive Payments will be due and payable on the last day of each calendar quarter [i.e. March 31st, June 30th, September 30th and December 31st] commencing June 30, 2021 and continuing on the last day of each calendar quarter thereafter until the earlier of: (i) March 31, 2031; (ii) the date the Annual Incentive Payments and the Quarterly Incentive Payments paid by the City to the Company under the terms of this Agreement equal the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00), collectively; or (iii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein *provided, however*, in the event the Company timely satisfies the Lease Extension Requirement and the Maximum Incentive Amount has not been satisfied, the Quarterly Incentive Payments will continue until the earlier of: (a) March 31, 2038; (b) the date the Annual Incentive Payments and the Quarterly Incentive Payments paid by the City to the Company under the terms of this Agreement equal SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00), collectively; or (c) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate more fully set forth herein. The first quarterly installment payment shall be in the amount equal to the Net City Sales/Use Taxes paid by the Company to the City for taxable sales by the Company to its customers at the Restaurant during the calendar quarter commencing on January 1, 2021 and ending on March 31, 2021. Each subsequent Quarterly Incentive Payment shall be in the amount equal to the lesser of: (i) the Net City Sales/Use Taxes collected by the City from the Company for sales by the Company to its customers at the Restaurant for the calendar quarter preceding the date of the Payment Request; and (ii) the amount determined by subtracting all Annual Incentive Payments and all Quarterly Incentive Payments previously paid by the City to the Company under the terms of this Agreement from the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00).

5. Maximum Incentive Amount. Notwithstanding anything contained herein to the contrary, subject to the annual appropriation of funds and the conditions precedent, covenants, and limitations set forth in this Agreement, the maximum cumulative amount of Economic Development Incentives payable under the terms of this Agreement is SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00). If there is any conflict between this Article VIII, Section 5 and any other term or provision of this Agreement, this Article VIII, Section 5, shall control.

6. 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 Quarterly 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.

7. Supplemental Payment Request. In the event the City denies any portion of a Payment Request pursuant to Article VIII, Section 6 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 7 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 the Net City Sales/Use Taxes paid to the City in connection with such Unconfirmed Sales/Use Tax Payment(s) for taxable sales by the Company to its customers at the Restaurant within forty-five (45) days after the City confirms receipt of the Unconfirmed Sales/Use Tax Payment(s) provided, however in no event will any payment made pursuant to this Article VIII, Section 7 when added to all previous Annual Incentive Payments and Quarterly Incentive Payments previously paid by the City to the Company, exceed the Maximum Incentive Amount of SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$680,000.00), collectively.

8. Multiple Restaurants or Retail Stores. Notwithstanding anything contained herein to the contrary, if the Company owns or operates multiple restaurants or other retail stores in the City, only local sales/use taxes collected and paid relating to taxable sales by the Company to its customers at the Restaurant shall be eligible for Quarterly Grants or included when calculating the amount of any Quarterly Incentive Payment.

9. Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay any Quarterly Grant or otherwise extracts or imposes any penalty or other restriction upon the payment of the same, the Quarterly Grants will cease as of the effective date of such limitation or restriction and be of no further force or effect in which event the City shall be under no further obligation to pay any Quarterly Incentive Payments to the Company as of the effective date of such limitation or restriction. In the event the City Sales/Use Taxes are increased to more than one percent (1%), the Quarterly Grants payable under the terms of this Agreement shall continue to be calculated at one percent (1%) of the City Sales/Use Taxes paid for taxable sales by the Company to its customers at the Restaurant. In the event the City Sales/Use Taxes are decreased to less than one percent (1%), the Quarterly Grants payable under the terms of this Agreement shall be calculated at the decreased percentage. In the event the Property Tax Relief Taxes are increased to more than one-half of one percent (½%), the Quarterly Grants payable under the terms of this Agreement shall continue to be calculated at one-half of one percent (½%) of the Property Tax Relief Taxes paid for taxable sales at the Restaurant. In the event the Property Tax Relief Taxes are decreased to less than one-half of one percent (½%), the Quarterly Grants payable under the terms of this Agreement shall be calculated at the decreased percentage. In the event of any conflict between the terms and provisions of this Article VIII, Section 9 and any other term or provision of this Agreement, the terms and provisions of this Article VIII, Section 9 shall control.

10. Erroneously Paid Sales Tax. In the event the State Comptroller determines, for any reason, that any sales and use taxes were erroneously paid to the City from the sales provided for herein and the City shall be required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the next Quarterly Incentive Payment payable by the City to the Company pursuant to this Agreement.

11. Revenue Sharing Agreement. The Parties designate this Agreement as a revenue sharing agreement, thereby entitling the City to request sales tax information from the State Comptroller, pursuant to §321.3022 of the Texas Tax Code, as amended and/or replaced. Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City shall have no obligation to pay any Quarterly Incentive Payment due under the terms of this Agreement if the State Comptroller fails, after written request by the City, to provide the City with the information necessary to: (i) verify the amount of sales/use taxes paid by the Company to the City relating solely to taxable sales made by the Company to its customers at the Restaurant; and (ii) calculate the amount of such Quarterly Incentive Payment. If §321.3022 of the Texas Tax Code is hereafter amended or a new law is enacted requiring additional consents and/or information to obtain any information necessary for the City to verify or calculate the amount of any Quarterly Incentive Payment payable under the terms of this Agreement, no future Quarterly Incentive Payments payable pursuant to this Agreement shall be due or payable unless and until the Company provides the City with such additional consents and/or information.

12. Other Taxing Entities. The Parties acknowledge and agree that ad valorem taxes assessed or collected against the Land, Building and Company BPP by the Mesquite Independent School District, the County of Dallas and/or any other taxing entity other than the City shall not be included in determining the amount of any Annual Grant payable under the terms of this Agreement.

13. Funds Available for Payment of Economic Development Incentives. The Parties acknowledge that: (i) the Annual Grants are measured and calculated by the amount of ad valorem taxes paid by the Landlord and the Company to the City for ad valorem taxes assessed and collected by the City against the Land, Building and Company BPP during the Incentive Period but are to be paid from the City's general fund and are not a refund or reimbursement from a segregated account of ad valorem taxes paid by the Landlord or the Company to the City; and (ii) the Quarterly Grants are measured and calculated by the amount of Net City Sales/Use Taxes paid by the Company to the City for taxable sales by the Company to its customers at the Restaurant during the Incentive Period but are to be paid from the City's general fund and are not a refund or reimbursement from a segregated account of City Sales/Use Taxes or Property Tax Relief Taxes paid by the Company to the City. The Economic Development Incentives payable by the City to the Company pursuant to 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. The Parties agree no other source of funds of the City are subject to the payment of the Economic Development Incentives. The provisions of this Article VIII, Section 13 shall expressly survive the expiration or termination of this Agreement. In the event of any conflict between the terms and provisions of this Article VIII, Section 13 and any other term or provision of this Agreement, the terms and provisions of this Article VIII, Section 13 shall control.

14. Appropriation of Funds. All Annual Grants, Quarterly Grants, Annual Incentive Payments and Quarterly Incentive Payments shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such payment is to be made. The provisions of this Article VIII, Section 14 shall expressly survive the expiration or termination of this Agreement. In the event of any conflict between the terms and provisions of this Article VIII, Section 14 and any other term or provision of this Agreement, the terms and provisions of this Article VIII, Section 14 shall control.

15. 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. Company Default. The Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; or (ii) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City; or (iii) if the Landlord fails to timely pay any ad valorem taxes assessed by the City against the Land and Building and the Landlord or the Company fails to cure such failure within sixty (60) days after written notice by the City to the Company (each a "**Company Default**").

2. City Default. The City shall be in default of this Agreement if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the Company (each a "**City Default**").

3. City Remedies. Upon the occurrence of a Company Default, the City shall have no obligation to pay any future Annual Incentive Payment or Quarterly Incentive Payment to the Company and the City shall have the right to: (i) recapture a portion of the Economic Development Incentives previously paid by the City to the Company pursuant to Article IX, Section 5 below; (ii) terminate this Agreement by written notice to the Company and the Landlord; and (iii) exercise any and/or all other rights and/or remedies available to the City pursuant to the laws of the State of Texas, provided, however, the City shall not be entitled to the recovery of attorneys' fees (except in the event of the exercise by the City of the remedies set forth in Chapter 2264 of the Texas Government Code) or consequential, punitive, exemplary or speculative damages.

4. Company Remedies. Upon the occurrence of a City Default, the Company shall have the right to terminate this Agreement by written notice to the City and the Landlord. The Parties agree this is not a contract for goods or services. Nothing contained herein shall be construed as a waiver of the City's immunity but in the event a

court of competent jurisdiction determines the City's immunity from suit is waived in a suit against the City for breach of this Agreement, the Parties agree:

- (i) the total amount of money awarded is limited to actual damages in an amount not to exceed SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00);
- (ii) the recovery of damages against the City shall not include consequential, punitive, exemplary or speculative damages;
- (iii) The Parties shall not recover attorney's fees; and
- (iv) The Parties are not entitled to specific performance or injunctive relief against the City.

5. Recapture of Economic Development Incentives. In the event of a Company Default, the Company shall pay to the City, within thirty (30) days after written demand by 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 most recent Annual Incentive Payment or Quarterly Incentive Payment 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) three percent (3%) per annum, such interest rate to be calculated on the amount being recaptured from the date the payment being recaptured was paid by the City to the Company until the amount being recaptured is 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 5, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Company or the Landlord, 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 from the Company.

6. Waiver of Consequential, Punitive or Speculative Damages. THE PARTIES 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, EXEMPLARY OR SPECULATIVE DAMAGES.

7. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of the Parties 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 Company may not be assigned or transferred by 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 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 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 Company's general or managing partner 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, 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 Company. This Agreement may be assigned by the Landlord without the prior written consent of the City provided the Landlord has given the City prior written notice of such assignment and, within thirty (30) days following the occurrence of the assignment, Landlord delivers to the City an assignment and assumption agreement executed by Landlord and such assignee whereby the assignee agrees to be bound by the terms of this Agreement (a "**Documented Landlord Assignment**"). Upon the occurrence of a Documented Landlord Assignment, the assignee shall be deemed to be the "Landlord" for all purposes hereunder. Furthermore, neither the Company nor any approved assignee or

their legal representatives or successors in interest shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, encumber or otherwise transfer any interest in any receivables under this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may 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 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 (except in the event of a Documented Landlord Assignment). Any attempted 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 to any Party under the terms of this Agreement 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 Party 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 one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. 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:

COMPANY: 321 Firehouse GP LLC
321 W. Main St.
Grand Prairie, TX 75050
Attention: Jason Alan Smith
Phone: (310) 927-1411
Email: jason@firehousegp.com

LANDLORD: Frank A. Greenhaw
1211 Lakeshore Dr.
Mesquite, Texas 75149-4201
Phone: (972) 285-5618
Email: artgreenhaw@webtv.net

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

With a copy to:

City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149
Attention: City Attorney

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 ad valorem taxes) lawfully due and owing by 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. No Right or Interest of Landlord. The Landlord expressly acknowledges and agrees that even though the Landlord is paying the ad valorem taxes on the Land and Building to the City, the Economic Development Incentives granted pursuant to this Agreement are being granted solely to the Company to incentivize the Company to open and operate the Restaurant at the Property. The Landlord consents to the payment of the Economic Development Incentives to the Company and expressly acknowledges and agrees that the Landlord shall not have any

right, title or interest in any of the Economic Development Incentives granted herein to the Company. The provisions of this Article X, Section 4 shall expressly survive the expiration or termination of this Agreement.

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 and the Landlord. 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. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Authority. 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. The Company represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Company has the authority to sign this Agreement on behalf of the Company.

17. Usury Savings Clause. The Company and the City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Article X, Section 17 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 17 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.

18. Date for Performance. If the time period by which any act required hereunder must be performed falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

19. Anti-Boycott Verification. The Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is construed to be a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, but only to the extent such section is applicable, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Company understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

20. Iran, Sudan and Foreign Terrorist Organizations. The Company represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Company and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Company understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Company and exists to make a profit.

21. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees 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.

22. Execution of Agreement by Parties. If this Agreement is not executed by the Company, the Landlord and the City on or before November 6, 2020, this Agreement will be null and void and of no force or effect.

23. 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:

By: _____
Sonja Land
City Secretary

Date: _____

APPROVED AS TO FORM:

City Attorney or his Designee

CITY:

CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Name: Cliff Keheley
Title: City Manager

Date: _____

COMPANY:

**321 FIREHOUSE GP LLC,
a Texas limited liability company**

By: _____
Name: _____
Title: _____

Date: _____

LANDLORD:

Name: Frank Art Greenhaw

Date: _____

**EXHIBIT A
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Legal Description of Land

Pt. Lots 0014 & 15, 20 x 1 15, Original Town Mesquite, Texas as shown in the Map & Plat Records, Dallas County, Texas and aka 105 S. Broad Street, Mesquite, Texas 75149-4201

Pt. Lots 0015 & 16, 45.5 x 1 15, Original Town Mesquite, Texas as shown in the Map & Plat Records, Dallas County, Texas and aka 105 S. Broad Street, Mesquite, Texas 75149-4201

**EXHIBIT B
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Company BPP

1. All normal restaurant/business furnishings such as tables, seating, office furnishings, point of purchase equipment, counters and bars
2. All kitchen equipment and appliances
3. All office equipment
4. Light fixtures
5. Décor
6. Beer Display Cooler
7. Keg Cooler
8. Prep/Bar Sink
9. Natural Gas Range/Oven
10. Fryer
11. Flat top
12. Electric Steam Table
13. Cold-Pan Table
14. Ice Machine
15. Under Bar Ice Bin
16. Tea/Coffee Maker
17. Mop Sink
18. Upright Freezers
19. Glassware, flatware, plates, etc
20. Dishwasher and drain board
21. Three-compartment sink
22. Mop sink
23. Ice Maker
24. Hand sink
25. Ice bin
26. Wire shelving, various
27. Water station with ice bin
28. Beverage table
29. Tea dispensers
30. Soda dispensers
31. Co2 tank
32. Entertainment sound system
33. Specialty lighting
34. AV equipment
35. Art Greenhaw music industry memorabilia
36. Art Greenhaw local history memorabilia
37. Outdoor dining furniture, signage and decor

**EXHIBIT C
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Company Improvements

Demolition
Concrete stripping and stain
Masonry repair
Utility upgrades
Mechanical upgrades
Thermal and moisture protection
Security system
Roofing improvements
Drywall, plaster, wallcoverings
Commercial kitchen
Bar/coffee bar
Entertainment space
Restroom facilities
All facility furnishings
All facility fixtures
All facility décor
Doors, frames, hardware
Fire suppression system
Storefront rehabilitation
Outdoor patio space: décor, furniture, fittings
Signage
Minimum of three televisions
Audio/visual systems interior and exterior
Lighting system for performance area