

RESOLUTION NO. 27-2023

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 CHAPTER 380 AGREEMENT FOR SUCH PURPOSES WITH PLUCKERS – MESQUITE, LLC, FOR THE CONSTRUCTION OF A NEW RESTAURANT FACILITY TO BE LOCATED AT 1340 NORTH PEACHTREE ROAD, MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, AND 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 Council has been presented with a proposed agreement providing economic incentives to Pluckers – Mesquite, LLC (the “Company”), for the construction of a new restaurant facility, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “Agreement”); and

WHEREAS, the proposed restaurant facility is to be located at 1340 North Peachtree Road, City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in Exhibit A to the Agreement (the “Property”); and

WHEREAS, the City would like to encourage the development of the Property by granting certain economic development incentives to the Company; and

WHEREAS, development of the Property will increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City; and

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

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

Economic Development / Pluckers – Mesquite, LLC / 380 Agreement

June 20, 2023

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

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

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

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

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

SECTION 6. That 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.

Economic Development / Pluckers – Mesquite, LLC / 380 Agreement
June 20, 2023
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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 20th day of June 2023.

DocuSigned by:
Daniel Aleman Jr.
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Daniel Alemán, Jr.
Mayor

ATTEST:

DocuSigned by:
Sonja Land
C2518095973F46A...

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

DocuSigned by:
David Paschall
666E18891208434...

David L. Paschall
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**(Chapter 380 Agreement)**

This Economic Development Program Agreement (“**Agreement**”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the “**City**”) and Pluckers-Mesquite, LLC., a Texas limited liability company (the “**Company**”) for the purposes and considerations stated below:

RECITALS:

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

WHEREAS, the Company is in the business of operating a restaurant with indoor and outdoor patio seating (the “**Company’s Business**”); and

WHEREAS, the Company has or will be leasing the real property commonly known as 1340 N. Peachtree Road, Mesquite, Texas, 75149, such real property being more particularly described in **Exhibit “A** (the “**Land**”), together with an approximately 8,000 square foot building currently located on the Land (the “**Old Structure**”); and

WHEREAS, the Company will be demolishing the Old Structure and constructing a new building with a minimum of 8,200 square feet where the Company shall operate Company’s Business as more particularly described in **Exhibit “B**” (the “**Building**”); and

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

WHEREAS, the Old Structure is a blighted restaurant facility that has been vacant for many years; and

WHEREAS, the Company has agreed to demolish the Old Structure, construct a new Building and make substantial capital improvements to the interior and exterior of the Mesquite Facility for a new restaurant concept; and

WHEREAS, the Company has agreed to operate the Company’s Business at the Mesquite Facility for a period of at least ten (10) years; and

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

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

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to make the Capital Improvements, and to commit to operate the Company’s Business at the Mesquite Facility for at least ten (10) years is the agreement by the City to provide the Economic Development Incentives more fully set forth in this Agreement upon the terms and subject to the conditions more fully set forth in this Agreement; and

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

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

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

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

ARTICLE I
Incorporation of Recitals and Exhibits

The foregoing recitals (“**Recitals**”) and all referenced exhibits in are hereby incorporated into the body of this Agreement and shall be considered a part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II
Definitions

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

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

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

“Annual Sales Minimum” shall have the meaning set forth in Article VI Section 6 of this Agreement.

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

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

“Capital Investment” shall have the meaning set forth in Article VI, Section 3 of this Agreement and shall include only expenditures capitalized as capital assets on the books of the Company in accordance with generally accepted accounting principles.

“Capital Investment Certificate” shall have the meaning set forth in Article VI, Section 3 of this Agreement.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that all Conditions Precedent have been satisfied and are then continuing; (ii) that the Company has operated the Company’s Business at the Mesquite at all times from the commencement of the Operations Period up to and including the date of the Certificate of Compliance except for such Temporary Periods when the operation of the Company’s Business at the Mesquite Facility was prevented by an Event of Force Majeure; and (iii) that no Company Default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default by the Company under the terms of this Agreement.

“Certificate of Occupancy” shall mean a final certificate of occupancy issued to the Company by the City authorizing the Company to operate the Company’s Business at the Mesquite Facility.

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

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

“City Default” shall have the meaning set forth in Article IX Section 4 of this Agreement.

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

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

“Commence Demolition” shall mean the Company has secured all required permits from the necessary governmental entities, including the City, for the demolition of structures at the Mesquite Facility and has begun physically removing the Old Structure from the Land in accordance with applicable laws.

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

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

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

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

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

“Construction Period” shall mean the period commencing with the Effective Date and continuing until and including **July 31, 2024**.

“Economic Development Incentives” shall mean the Sales Tax Grant described in Article VIII, Section 1.

“Effective Date” shall mean the date the Company and the City execute this Agreement if both Parties execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the dates this Agreement is executed by the Company and the City.

“Equipment” shall mean tangible personal property a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Company for financial statement purposes, or \$5,000.

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

“Event of Force Majeure” shall mean a major unforeseeable act or event that: (i) prevents a Party from performing its obligations under this Agreement (the “Non-Performing Party”); (ii) is beyond the reasonable control of the Non-Performing Party; (iii) is not caused by any act or omission on the part of the Non-Performing Party or the Non-Performing Party’s officers, agents, representatives, employees, contractors, customers or invitees; and (iv) could not have been prevented or avoided by the exercise by the Non-Performing Party of such reasonable diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An Event of Force Majeure must satisfy each of the above requirements and includes 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, temporary work stoppages due to strikes by employees and material shortages due to the inability of the Company to obtain materials from the Company’s suppliers for reasons other than the cost of the materials. 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.

“Federal Holidays” shall mean public holidays as established by Federal law, 5 U.S.C. § 6103, as may be amended.

“Incentive Period” shall mean the period commencing with **August 1, 2024** and continuing until **July 31, 2034**.

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

“Lease” shall have the meaning set forth in Article VII Section 8 of this Agreement.

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

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

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

“Non-Performing Party” shall have the meaning set forth in the definition of Event of Force Majeure in Article II of this Agreement.

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

“Operations Period” shall mean the period commencing on **August 1, 2024** and continuing until **July 31, 2034**.

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

“Parties” shall mean both the Company and the City.

“Payment Request” and “Payment Requests” shall mean written request(s) executed by a duly authorized Company Representative requesting a Sales Tax Grant Incentive Payment.

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

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

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

“Sales Tax Grant” shall have the meaning set forth in Article VIII, Section 1 of this Agreement.

“Sales Tax Grant Incentive Payment” shall have the meaning set forth in Article VIII, Section 2 of this Agreement.

“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.

“Temporary Periods” as used herein shall mean one or more periods of time when the Company’s continuous operation of the Company’s Business from the Mesquite Facility is prevented by an Event of Force Majeure provided, however, in no event will any such period exceed one hundred and eighty (180) days.

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

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

behalf of the City for use by any other Type B economic development corporation hereafter created by or on behalf of the City.

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

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

ARTICLE III Authority for Agreement

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

ARTICLE IV Term

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) **July 31, 2034**; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the “Term”).

ARTICLE V Company’s Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

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

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

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

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

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

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

ARTICLE VI Company's Additional Covenants

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 Precedent and limitations more fully set forth herein, the Company covenants and agrees to comply with each and every one of the following covenants during the Term of this Agreement, to-wit:

1. Demolition. Subject to an Event of Force Majeure, the Company shall Commence Demolition of the Old Structure on or before **September 30, 2023** and work diligently to complete demolition of the Old Structure within a reasonable amount of time. The Company agrees and warrants that it will follow all applicable laws and regulations regarding said demolition, including but not limited to: (i) conducting appropriate asbestos testing and remediation if necessary; and (ii) properly hauling all scrap, buildings, materials, debris, rubbish and other degradable materials to an authorized landfill;

2. Capital Improvements. Prior to the end of the Construction Period, subject to an Event of Force Majeure, the Company shall complete construction of the new Building for a new restaurant concept indoor and outdoor patio seating, and shall have completed substantial renovations and capital improvements to the interior and exterior of the Mesquite Facility including, without limitation, foundation, mechanical, structural, cosmetic, landscaping, lighting, parking lot and site improvements as more particularly described and/or depicted in **Exhibit "B"** (the "**Capital Improvements**");

3. Capital Investment. Prior to the end of the Construction Period, the Company will make expenditures in the amount of at least **THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00)** in connection with the Capital Improvements (the "**Capital Investment**"). Within sixty (60) days after the last day of the Construction 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 Capital Improvements as of the last day of the Construction Period (the "**Capital Investment Certificate**"). When calculating the expenditures required under this Article VI, Section 3 and Article VII Section 6, the Parties agree that no expenditure shall be included as part of the Capital Investment which is associated with demolition of the Old Structure or acquisition of the Land, and furthermore that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles, provided, however, that notwithstanding anything herein to the contrary, expenditures may include furniture, fixtures, and Equipment;

4. Certificate of Occupancy. The Company shall complete the Capital Improvements and obtain a Certificate of Occupancy to operate the Company's Business at the Mesquite Facility on or before **July 31, 2024** subject to an Event of Force Majeure;

5. Operation of Company's Business at the Mesquite Facility. The Company shall commence the operation of the Company's Business substantially similar to the concept described and/or depicted in **Exhibit "B"** on or before **August 1, 2024**, subject to an Event of Force Majeure, and shall operate the Company's Business at the Mesquite Facility continuously thereafter until and including **July 31, 2034**, for a minimum of seven (7) days a week, eight (8) hours per day except for: (i) Temporary Periods when the Company's continued operation of such restaurant concept is prevented by an Event of Force Majeure and (ii) during Federal Holidays;

6. Annual Sales Minimum. The Company shall make a minimum of **SIX MILLION AND NO/100 DOLLARS (\$6,000,000.00)** in taxable sales to its customers at the Mesquite Facility that resulted in the payment by the Company to the City of City Sales/Use Tax during each period covered by each Sales Tax Grant Incentive Payment as further described in Article VIII, Section 2 below ("**Annual Sales Minimum**"). Failure to meet the Annual Sales Minimum during one Sales Tax Grant Incentive Payment period shall not bar the Company from obtaining subsequent Sales Tax Grant

Incentive Payments during subsequent periods where the Company is in full compliance with this Agreement, provided this Agreement has not been terminated;

7. Records and Reports. The Company shall deliver to the City within sixty (60) days after written request, copies of records, reports and other documentation as the City may reasonably request to confirm compliance by the Company with this Agreement;

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

9. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VI, Section 8 above;

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

11. Maintenance Obligations. The Company shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall, at the Company's sole cost and expense, maintain the Building in good repair at all times during the Operations Period;

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

13. 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

14. 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 Incentive

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

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

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

- the Company's sales/use tax number under which the sales/use tax was remitted;
- the period that the sales/use tax payment was made by the Company;
- the amount of taxable sales made by the Company to its customers at the Mesquite Facility during the period covered by the Payment Request that resulted in the payment by the Company to the City

of City Sales/Use Tax, with sufficient supporting documentation in the judgment of the City to confirm the amount of taxable sales made by the Company attributable solely to sales at the Mesquite Facility; and

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

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

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

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

6. Capital Investment. The Company shall have satisfied its obligation to make the Capital Investment by making expenditures in the collective amount of at least THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,500,000.00) in connection with the Capital Improvements at the Mesquite Facility no later than **July 31, 2024** and shall have submitted the Capital Investment Certificate to the City. When calculating such expenditures, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles, provided, however, that notwithstanding anything herein to the contrary, expenditures may include furniture, fixtures, and Equipment;

7. Annual Sales Minimum. The Company shall achieve the Annual Sales Minimum during the period covered by each Sales Tax Grant Incentive Payment and provide sufficient documentation to the City with each Payment Request to verify compliance. Failure to meet the Annual Sales Minimum during one Sales Tax Grant Incentive Payment period shall not bar the Company from obtaining subsequent Sales Tax Grant Incentive Payments during subsequent periods where the Company is in full compliance with this Agreement, provided this Agreement has not been terminated;

8. Lease of Mesquite Facility. The Company shall enter into a lease legally allowing the Company to both operate the Company's Business and occupy one hundred percent (100%) of the Land and Building for a primary term commencing no later than **August 1, 2024**, and terminating no earlier than **July 31, 2034** (the "Lease") and the Lease must be in effect through and at the time of each Payment Request;

9. Copy of Lease. The Company shall deliver to the City a copy of the Lease satisfying the requirements herein, on or before **July 31, 2024**;

10. Certificate of Occupancy. The Company shall have completed the Capital Improvements and shall have obtained a Certificate of Occupancy for the Building on or before **July 31, 2024**, subject to an Event of Force Majeure;

11. Operation of Company Business at Mesquite Facility. The Company shall have operated the Company's Business substantially similar in concept to **Exhibit "B"** at the Mesquite Facility from **August 1, 2024** through and including the date of the Payment Request for a minimum of seven (7) days a week, eight (8) hours per day, except for: (i) Temporary Periods when the operation of such restaurant at the Mesquite Facility is prevented by an Event of Force Majeure and (ii) Federal Holidays;

12. Records and Reports. The Company shall have delivered to the City copies of such records, reports, and such other documentation as the City may reasonably request to confirm compliance by the Company with this Agreement;

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

14. Maintenance Obligations. The Building shall be in compliance with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of the Payment Request and the Company shall have maintained the Building in good repair from the commencement date of the Operations Period up to and including the date of the Payment Request;

15. Compliance with Laws. As of the date of the Payment Request, the Company shall be in compliance with all federal, state and local laws and regulations relating to the operation of the Company’s Business at the Mesquite Facility;

16. 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;

17. Performance 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 agreements now and hereafter existing between the Company and the City, and no Company Default under the terms of such agreement(s) shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of such agreement(s);

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

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

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

**ARTICLE VIII
Economic Development Incentives**

1. Sales Tax Grant. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in the amount equal to the Net City Sales/Use Taxes paid by the Company to the City in connection with taxable sales made by the Company to its customers at the Mesquite Facility during the Incentive Period in a total amount not to exceed SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$700,000.00) (the “Sales Tax Grant”).

2. Payment of Sales Tax Grant. Provided all Conditions Precedent and covenants set forth in this Agreement have been satisfied and are then continuing and subject to any limitations set forth herein, the City will pay the Sales Tax Grant to the Company in up to a maximum of ten (10) payments (individually a “Sales Tax Grant Incentive Payment” and sometimes collectively the “Sales Tax Grant Incentive Payments”) as more fully set forth below:

PAYMENT REQUEST DUE DATE	PERIOD COVERED BY PAYMENT	PAYMENT DUE DATE	AMOUNT OF PAYMENT
January 1, 2025	8/1/24 through 12/31/24	March 30, 2025	The Net City Sales/Use Taxes paid by the Company to the City during the period from 8/1/24 through 12/31/24 attributable solely to sales made by the Company to its customers at the Mesquite Facility.
January 1, 2026	01/1/25 through 12/31/25	March 30, 2026	The Net City Sales/Use Taxes paid by the Company to the City during the period from 01/1/25 through 12/31/25 attributable solely

			to sales made by the Company to its customers at the Mesquite Facility.
January 1, 2027	01/1/26 12/31/26	through	March 30, 2027
January 1, 2028	01/1/27 12/31/27	through	March 30, 2028
January 1, 2029	01/1/28 12/31/28	through	March 30, 2029
January 1, 2030	01/1/29 12/31/29	through	March 30, 2030
January 1, 2031	01/1/30 12/31/30	through	March 30, 2031
January 1, 2032	01/1/31 12/31/31	through	March 30, 2032
January 1, 2033	01/1/32 12/31/32	through	March 30, 2033
January 1, 2034	01/1/33 12/31/33	through	March 30, 2034
January 1, 2035	01/1/34 through 7/31/34		March 30, 2035

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

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

5. Supplemental Payment Request. In the event the City denies any portion of a Payment Request pursuant to Article VIII, Section 4 above, the Company may, within thirty (30) days after such denial, submit a supplemental Payment Request for the portion of the Payment Request that was denied along with documentation evidencing that one or more Unconfirmed Sales/Use Tax Payments were indeed received by the City. If the documentation provided by the Company to the City pursuant to this Article VIII, Section 5 is satisfactory to the City and the City is able to confirm receipt of such previously Unconfirmed Sales/Use Tax Payment(s), 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) within thirty (30) days after the City confirms receipt of the Unconfirmed Sales/Use Tax Payment(s).

6. Limitation on Sales Tax Grant. Notwithstanding anything contained in this Agreement to the contrary, (i) no Sales Tax Grant incentives shall be due and payable for any period prior to **August 1, 2024** or for any period after the Incentive Period; and (ii) if the Company owns or operates multiple facilities, only sales/use taxes collected and paid relating to sales at the Mesquite Facility shall be eligible for inclusion when calculating the amount of the Sales Tax Grant incentive. If there is any conflict between this Article VIII, Section 6 and any other term or provision of this Agreement, this Article VIII, Section 6 shall control.

7. 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 Sales Tax Grant 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 taxes paid by the Company to the City relating solely to taxable sales made by the Company to its customers at the Mesquite Facility; and (ii) calculate the amount of such Sales Tax Grant Incentive Payment.

8. Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay the Sales Tax Grant or otherwise extracts or imposes any penalty or other restriction upon the payment of the same, the Sales Tax Grant 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 Sales Tax Grant Incentive Payments to the Company as of the effective date of such limitation or restriction.

9. 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 Sales Tax Grant Incentive Payment payable by the City to the Company pursuant to this Agreement.

10. 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 and 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; (ii) upon any assignment of this Agreement by the Company in violation of this Agreement; (iii) upon failure of Company to meet the Annual Sales Minimum for more than one Sales Tax Grant Incentive Payment period; or (iv) 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 thirty (30) days after written notice by the City to the Company (each a "**Company Default**").

2. City Remedies. In the event of a Company Default, the City shall have no obligation to pay any Sales Tax Grant Incentive Payments to the Company for the Sales Tax Incentive Payment period in which the Company Default occurred and for any subsequent year(s) and the City shall have the right to: (i) immediately terminate this Agreement by written notice to the Company; (ii) recapture the last Sales Tax Grant Incentive Payment previously paid by the City to the Company plus interest as more fully set forth in Article IX, Section 3 below; (iii) obtain specific performance and/or injunctive relief; and (iv) exercise any and/or all other rights and/or remedies available to the City pursuant to this Agreement and the laws of the State of Texas.

3. Recapture of Economic Development Incentives. In the event of a Company Default of this Agreement, the Company shall immediately pay to the City, at the City's address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to one hundred percent (100%) of the last Sales Tax Grant 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) five percent (5%) per annum, such interest rate to be calculated on the Sales Tax Grant Incentive Payment being recaptured from the date the Sales Tax Grant Incentive Payment was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 3, the Company shall be in breach of this Agreement and the City shall have the right, without further notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas to collect such sums.

4. City Default. The City shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the City; or (ii) 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 to the City (a "**City Default**").

5. 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. The City and the Company acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- (i) the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00);
- (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 or court costs; and
- (iv) the Company shall not be entitled to specific performance or injunctive relief against the City.

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

ARTICLE X Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company hereunder 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. Furthermore, neither the Company, nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by the Company and in the event the Company attempts to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to terminate this Agreement by written notice to the Company.

2. Notices. All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Parties at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective 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: Pluckers – Mesquite, LLC
811 Barton Springs Rd. Suite 600
Austin, Texas 78704-8702
Attention: Sean Greenberg

With a copy to: Weycer Kaplan Pulaski & Zuber, PC
24 Greenway Plaza, Suite 2050
Houston, Texas 77046
Attention: Jonathan D. Saikin, Esq.

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

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

3. Right to Offset. Following thirty (30) days' notice and opportunity to cure from the City to the Company, the City shall have the right to offset any amounts due and payable by the City under this Agreement against any delinquent debt (including 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. Remedies Cumulative. The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement shall be cumulative.

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 and the Company. Oral revisions, modifications or amendments are not permitted.

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

8. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Company Default or City 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 and agree to submit to the personal and subject matter jurisdiction of such courts.

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

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

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

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

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

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

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

17. Authority. 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.

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

19. Anti-Boycott Verification. If this Agreement is construed to be subject to Texas Government Code Chapter 2271, by signing below, the Company hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

20. Iran, Sudan and Foreign Terrorist Organizations. If this Agreement is construed to be subject to Section 2252.153 of the Texas Government Code, Company hereby represents, verifies, and warrants that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a "foreign terrorist organization" as defined in Section 2252.151 of the Texas Government Code.

21. Firearm Discrimination. If this Agreement is construed to be subject to Texas Government Code Chapter 2274 and unless the Company is otherwise exempt, if the Company employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental entity, the Company represents that: (i) the Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) the Company will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

22. Energy Boycott. If this Agreement is construed to be subject to Texas Government Code Chapter 2274 and unless the Company is otherwise exempt, if the Company employs at least ten (10) or more full-time employees and this Agreement has value of at least \$100,000 or more that is paid wholly or partly from public funds of the governmental entity, the Company represents that: (i) the Company does not boycott energy companies; and (ii) will not boycott energy companies during the term of this Agreement.

23. Usury Savings Clause. The Company and 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 18 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 18 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.

24. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City on or before 60 days after approval by the Mesquite City Council, this Agreement will be null and void and of no force or effect.

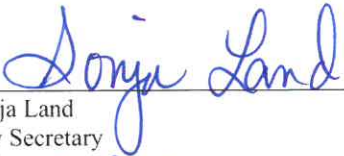
25. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2242.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate, execute the completed certificate before a notary and

provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed and notarized completed Form 1295 Certificate.

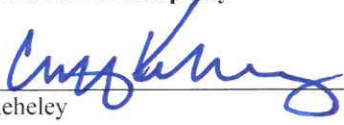
26. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

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: 8.9.2023

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

By: 
Cliff Keheley
City Manager
Date: 8-9-23

APPROVED AS TO FORM:
David L. Paschall, City Attorney

By: 
Senior Assistant City Attorney

COMPANY:

Pluckers – Mesquite, LLC
A Texas limited liability Company

By: 
Name: SEAN GREENBERG
Title: operations manager
Date: 7/5/2023

EXHIBIT A

(Legal Description of Property)

TRACT I:

Lot 5, Block A, OAKBROOK ADDITION, an addition to the City of Mesquite, Dallas County, Texas, according to the plat thereof recorded in Volume 98071, Page 1 of the Map Records of Dallas County, Texas.

TRACT II:

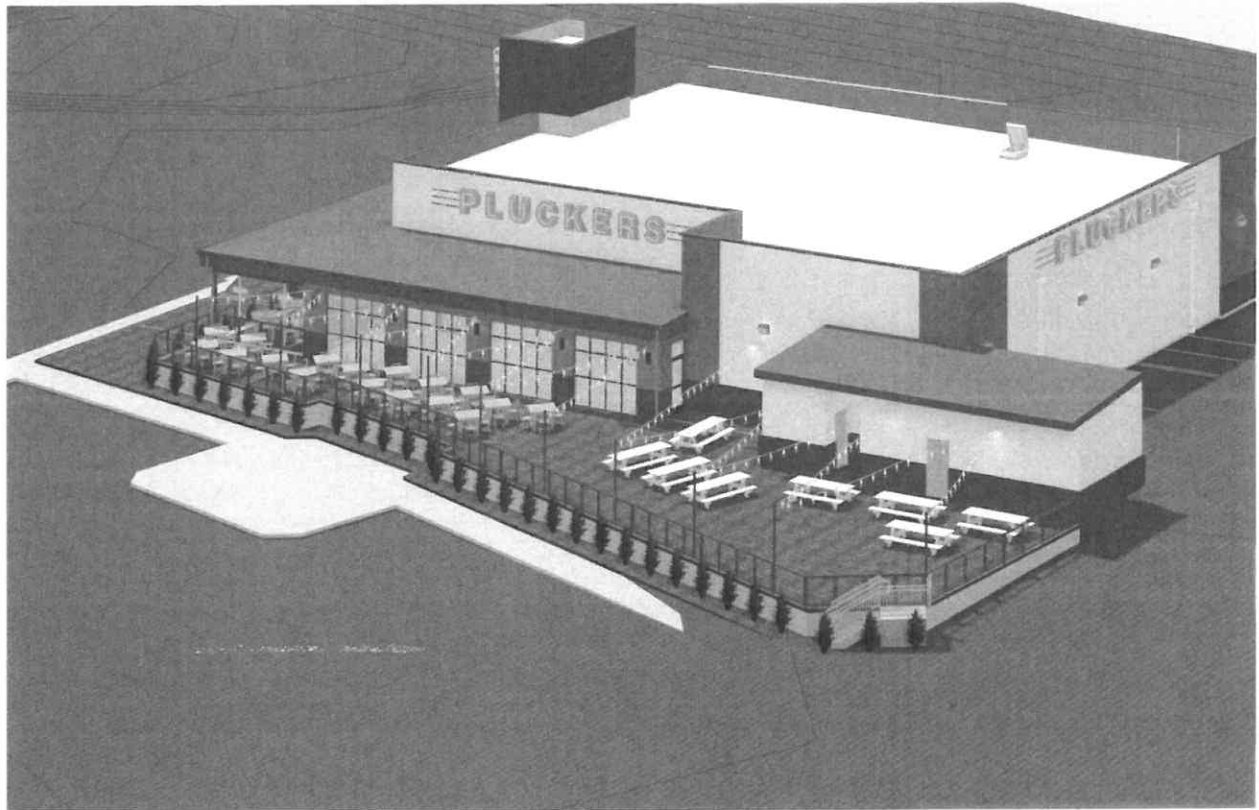
Easement rights created in Restated, Supplemented and Amended Declaration of Covenants, Conditions and Restrictions filed for record in Volume 94083, Page 3437 of the Deed Records of Dallas County, Texas, as amended by instruments recorded in Volume 97053, Page 1068, Volume 97053, Page 1082, Volume 97223, Page 3636, Volume 97235, Page 1259, Volume 97235, Page 1273, and Volume 98076, Page 7249 of the Deed Records of Dallas County, Texas.

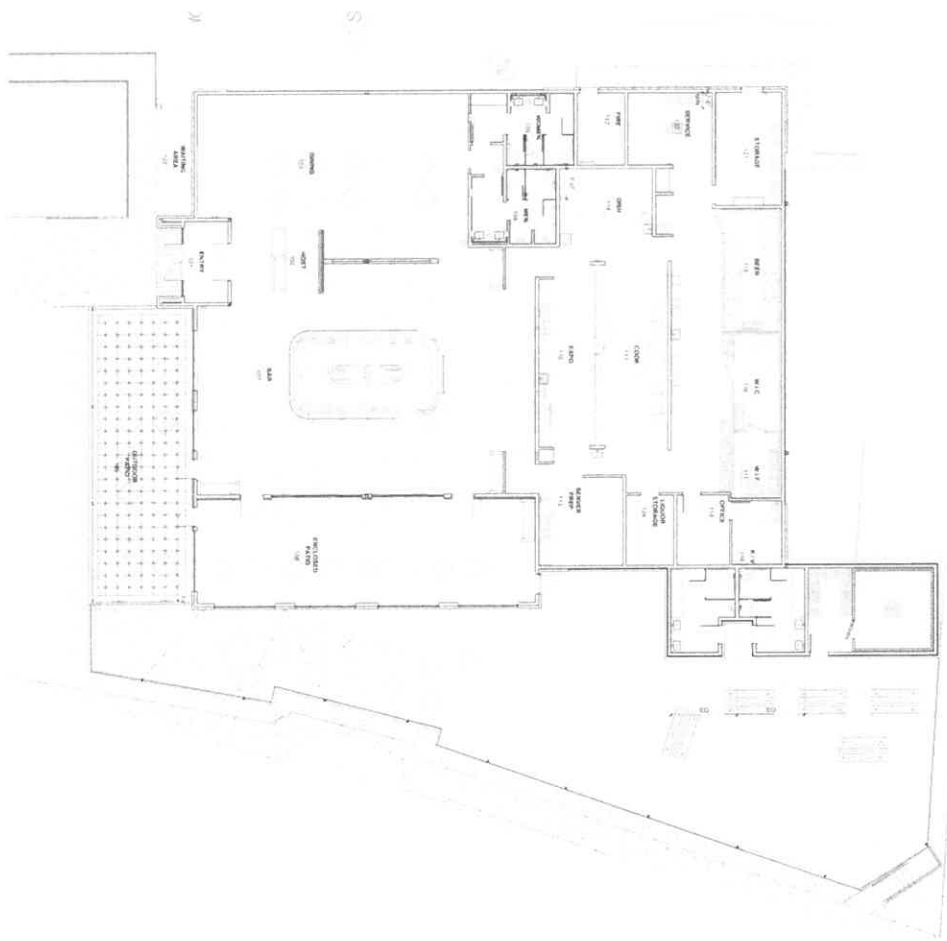
APN: 381431000A0050000

Street Address: 1340 N. Peachtree Road, Mesquite, TX 75149

EXHIBIT "B"
Capital Improvements and Depictions of Mesquite Facility







1 TOOSIBAN
 11/17/17

A1.2

PLUCKERS WING BAR - MESQUITE
 1340 N. PEACHTREE RD.
 MESQUITE, TX 78235

STOUSE DESIGN
 ARCHITECTURE INTERIOR DESIGN
 118 West Avenue
 Mesquite, TX 78235
 714.454.4885

PERMIT SET
 FOR
 REGULATORY
 APPROVAL