

RESOLUTION NO. 33-2025

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, EXECUTE, AND ADMINISTER A CHAPTER 380 ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT (“AGREEMENT”) FOR SUCH PURPOSES BY AND BETWEEN THE CITY OF MESQUITE (“CITY”) AND 80 JANE INDUSTRIAL, LLC (“DEVELOPER”), AND GRANTING TO THE DEVELOPER CERTAIN ECONOMIC DEVELOPMENT INCENTIVES; 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 80 Jane Industrial, LLC, a Texas domestic limited liability company (“**Developer**”), to facilitate the commercial development of a seven-acre tract by the Developer at 2100 East U.S. Highway 80 in Mesquite, Dallas County, Texas (the “**Property**”), by building a minimum 80,000 square foot industrial building with Manhattan Project Beer Company as the primary tenant, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, pursuant to Ordinance No. 5179, City Council approved Planned Development Zoning for the Property on July 21, 2025, including allowing industrial development along with the ability to build and operate a tasting room / restaurant / pavilion; and

WHEREAS, the Agreement requires the Developer to construct the minimum 80,000-square foot industrial building with at least 50 percent of the building leased to Manhattan Project Beer Company and be operational by July 31, 2027, under a minimum seven-year lease term; and

WHEREAS, as a bonus incentive, should the Developer construct a minimum 3,500-square foot tasting room / restaurant /pavilion on the Property, occupied by Manhattan Project Beer Company and operational by July 31, 2029, the City would provide a five (5) year, fifty percent (50) City real property tax grant based upon actual City ad valorem taxes paid on all improvements to the Property but not including business personal property, as well as to provide a one percent (1%) sales tax grant based upon actual local sales taxes paid to the City by Manhattan Project Beer Company for a period of five (5) years; and

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

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Developer, 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 Developer 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 \$100,000; (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.

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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.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 2nd day of September 2025.

Signed by:

*Daniel Alemán, Jr.*

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Daniel Alemán, Jr.  
Mayor

ATTEST:

DocuSigned by:

*Sonja Land*

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Sonja Land  
City Secretary

APPROVED AS TO LEGAL FORM:

Signed by:

*David L. Paschall*

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David L. Paschall  
City Attorney

# **EXHIBIT 1**

## **A NEW ECONOMIC DEVELOPMENT CHAPTER 380 PROGRAM AGREEMENT**

**BETWEEN**

**THE CITY OF MESQUITE**

**AND**

**80 JANE INDUSTRIAL, LLC**

## **CHAPTER 380 ECONOMIC DEVELOPMENT & PERFORMANCE AGREEMENT**

This Chapter 380 Economic Development & Performance Agreement (“**Agreement**”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (“**City**”), and 80 Jane Industrial, LLC, a Texas limited liability company (“**Company**”), for the purposes and considerations stated below:

### **W I T N E S S E T H:**

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

**WHEREAS**, the City and the Company may each hereafter be referred to as a “**Party**,” and may collectively be referred to as the “**Parties**” to this Agreement; and

**WHEREAS**, the City Council of the City of Mesquite, Texas (“**City Council**”) has investigated and determined that it is in the best interest of the City and its citizens to encourage economic development programs, including programs for making loans and grants of public money, to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380, Texas Local Government Code, as amended (“**Chapter 380**”); and

**WHEREAS**, Texas Local Government Code Section 380.001 and Article III, Section 52-a, of the Texas Constitution authorizes the City to establish an economic development program and the City hereby establishes such a program whereby, in exchange for Company’s performance of obligations as further described in this Agreement, the City agrees to grant public monies to Company in the form of incentives to advance the public purposes of stimulating business and commercial activity in the City, developing and diversifying the City’s economy, reducing City and State unemployment or underemployment by creating employment opportunities, adding taxable improvements to real property in the City, and expanding commerce to and through the City; and

**WHEREAS**, Company has under contract to purchase and will close on and purchase approximately 7.00 acre parcel of undeveloped land located at 2100 E. U.S. Highway 80, Mesquite, Texas, 75149, and depicted in **Exhibit A** attached hereto and incorporated herein by reference (“**Property**”); and

**WHEREAS**, the Company will develop the Property to include a minimum of 80,000 square foot industrial building with at least fifty percent (50%) of the building leased to and occupied by The Manhattan Project, LLC on or before July 31, 2027 for a minimum seven (7) year period (“**Manhattan Project**”); and

**WHEREAS**, upon Company’s payment of development and impact fees to the City and Commencement of Construction of the Building, the City will commence reconstruction of Jane Street to a two-lane, concrete, curb and gutter road with drainage and sidewalk in accordance with City standards from Highway 80 to where the southern end of the Property meets Jane Street at a cost estimated at Eight Hundred Sixty Thousand and no/100 dollars (\$860,000.00); and

**WHEREAS**, in the event Company constructs a minimum 3,500 square foot Restaurant/Tap Room/Pavilion with outdoor seating area on the Property that is leased to and occupied by Manhattan Project on or before July 31, 2029 and for a five (5) year period, then City will pay Company an economic incentive of fifty percent (50%) of the ad valorem taxes, not including business personal property taxes, paid by Company to City over such five year period plus the City Sales Taxes, as defined herein, over such five year period, with the economic incentive not to exceed a cumulative total of Two Hundred Fifty Thousand and no/100 dollars (\$250,000.00); and

**WHEREAS**, the Company has advised the City that a contributing factor inducing the Company to construct the industrial building on the Property and consider constructing a tasting room, restaurant and pavilion, all as provided herein, is the agreement by the City to provide economic development incentives to the Company under the terms and conditions more fully set forth in this Agreement; and

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

**WHEREAS**, the City Council has investigated and determined that the Company's project qualifies for economic development incentives and grants under the Chapter 380 Program established by the City in this Agreement ("**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 development of the Property will benefit the City and its citizens and advance a public purpose of the City because, *inter alia*, it will: (i) promote local economic development and stimulate business and commercial activity in the City; (ii) increase the taxable value of the Property thereby adding value to the City's tax rolls and increasing the ad valorem taxes collected by the City; (iii) create new employment opportunities in the City; and (iv) if the tasting room, restaurant and pavilion are constructed it will increase the sales taxes collected by the City; and

**WHEREAS**, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the granting of the economic development incentives more fully set forth herein on the terms and subject to the conditions more fully set forth herein will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City.

**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, the Parties agree as follows:

## **ARTICLE I**

### **Incorporation of Recitals**

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

## **ARTICLE II**

### **Definitions**

As used herein, the following terms shall have the following meanings:

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

“Ad Valorem Tax Incentive” means the City’s qualifying Incentive Payment to Company for ad valorem taxes paid to the City relating to the Property during each Incentive Tax Period as provided and limited in this Agreement.

“Agreement” shall mean this agreement together with all exhibits attached hereto and incorporated herein by reference.

“Building” shall mean an industrial building constructed on the Property and having a minimum of eighty thousand (80,000) square feet of rentable space in the Building.

“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 applicable Conditions Precedent at the time of presentation of the Certificate of Compliance, have been satisfied and are continuing; and (ii) that to the knowledge of the Company no default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a default by the Company under the terms of this Agreement. As used in this paragraph the terms “knowledge” or “knowingly” means the actual, then-current knowledge of any officer or employee of the Company.

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

“City Sales Tax” and “City Sales Taxes” shall mean the municipal sales taxes collected by or on behalf of the City for general fund uses 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 not including (a) the State of Texas Sales Taxes, and (b) any Additional Municipal Sales Taxes.

“Commencement of Construction” or “Commence Construction” shall mean obtaining from the City a building permit for the Property and payment to the City all development fees then due including but not limited to all impact fees.

“Company Representative” shall mean the Chief Executive Officer, Chief Financial Officer, President or any other authorized officer of the Company.

“Completion of Construction” or “Complete Construction” shall mean that construction is substantially completed, the City has inspected and approved the construction. Additionally and for construction of the Building, “Completion of Construction” or “Complete Construction” shall mean the City has issued a final shell certificate of occupancy for the entirety of the Building and a certificate of occupancy for fifty percent (50%) of the Building to Manhattan Project. Additionally and for construction of the Restaurant/Tap Room/Pavilion “Completion of Construction” or “Complete Construction” shall mean the City has issued a certificate of occupancy to Manhattan Project for the Restaurant/Tap Room/Pavilion. Completion of Construction shall be subject to Force Majeure.

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

“Condition Precedent to Jane Street Reconstruction” and Conditions Precedent to Jane Street Reconstruction shall have the meanings set forth in Article VI of this Agreement.

“Disclosure Statute” shall mean § 321.3022 of the Texas Tax Code, as amended and/or replaced.

“Effective Date” shall mean the date the City and Company execute this Agreement if all Parties execute this Agreement on the same date. If the Parties 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 City and Company.

“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.

Force Majeure. The phrase “Force Majeure” means any act that (i) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (ii) is beyond the reasonable control of the affected Party, (iii) is not due to the affected Party’s fault or negligence, and (iv) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts. “Force Majeure” shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (e) fires; (f) pandemics and epidemics;



and (g) delays caused by verified supply chain issues. Force Majeure shall not include any of the following events: (u) economic hardship; (v) changes in market condition; (w) any strike or labor dispute involving the employees of the Developers, other than industry or nationwide strikes or labor disputes; (x) weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (y) the occurrence of any manpower or equipment shortages; or (z) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Company.

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

“Incentive Grant” and shall mean an economic development incentive to be paid by the City as specified in Article X of this Agreement, pursuant to the terms and subject to the conditions and limitations set forth in this Agreement.

“Incentive Payment” shall mean the actual payment of any Incentive Grant by the City to the Company as set forth in this Agreement.

“Incentive Tax Period” shall mean the following periods of time during the Term: (a) the period of time occurring between and including the date a certificate of occupancy is issued for Manhattan Project for the Restaurant/Tap Room/Pavilion to and including the date that is 364 days thereafter; and (b) each of the four (4) year periods thereafter, each starting on and including the first day following the end of the period described in subsection (a) of this definition and ending on and including the day that is 364 days (or 365 days during a leap year) thereafter. For clarity, there are five (5) Incentive Tax Periods that run consecutively for a total of five (5) years, each Incentive Tax Period consisting of 365 days (or 366 days during a leap year). The first Incentive Tax Period starts the day the certificate of occupancy is issued for Manhattan Project for the Restaurant/Tap Room/Pavilion and the last Incentive Tax Period will end on the day that is five (5) years after the first day of the first Incentive Tax Period.

“Lease Requirement” shall mean: (1) with respect to the Building, a lease between Company and Manhattan Project granting Manhattan Project the right and obligation to occupy at least fifty percent (50%) of the rentable space within the Building for a minimum term of at least seven (7) years commencing on or before July 31, 2027; and (2) with respect to the Restaurant/Tap Room/Pavilion, a lease between Company and Manhattan Project granting Manhattan Project the right and obligation to occupy the Restaurant/Tap Room/Pavilion for a minimum term of at least five (5) years commencing on or before July 31, 2029.

“Manhattan Project” shall mean The Manhattan Project, LLC, a Texas limited liability company, and described in more detail in its website: <https://manhattanproject.beer/>.

“Maximum Incentive Amount” shall mean the maximum amount of economic development incentives payable under the terms of this Agreement, which is the collective sum of TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00).

“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).

“Net City Sales Taxes” means the City Sales Taxes collected by or on behalf of the City arising from sales of Taxable Items by Manhattan Project occurring at the Restaurant/Tap Room/Pavilion less the collection fee retained by the State Comptroller (currently 2%) and less any credits for returned items (it being expressly understood that the Net City’s Sales Taxes is being used only as a measurement for the City’s participation through the use of lawfully available funds). “Net City Sales Taxes” exclude any Sales Tax Collections resulting from any other operations or sales of Taxable Items on the Property, including any such operations of Manhattan Project at the Building.

“Party” and “Parties” shall have the meanings set forth in the Recitals to this Agreement.

“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” shall mean the real property described in the Recitals above and depicted in **Exhibit A** attached hereto and made a part hereof for all purposes.

“Property Tax Relief Taxes” means the municipal sales 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 (0.5%) to be used to reduce the property tax rate of the City.

“Request for Payment” means written correspondence addressed to the City at the notice address provided herein identifying the Incentive Payment requested.

“Restaurant/Tap Room/Pavilion” shall mean a minimum three thousand five hundred (3,500) square feet enclosed restaurant and tap room with outdoor seating area for eating and drinking covered at least in part by a pavilion, leased to and occupied by Manhattan Project on or before July 31, 2029 for a period of at least five (5) years, and generally located on the south side of the Building and as depicted in **Exhibit B** hereto.

“Roadway Impact Fees” shall mean the impact fees charged by the City to the Company to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to development of the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.

“Sales Tax Collections” means the amount of Net City Sales Taxes the City actually recovers from the Texas Comptroller of Public Accounts, generated by Tenants on the Property during any Incentive Tax Period as provided in this Agreement.

“Sales Tax Incentive” means the City’s qualifying Incentive Payment to Company for the amount of Sales Tax Collections occurring during an Incentive Tax Period as provided and limited in this Agreement.

“Sewer Impact Fees” shall mean the impact fees charged by the City to the Company to fund or recoup all or part of the cost for wastewater or sewer facilities necessitated by and attributable to development of the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.

“State of Texas Sales Taxes” means the State of Texas sales 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 or replaced, and all other sales taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the State of Texas.

“Taxable Item” shall have the same meaning assigned by §§ 151.010 and 151.0101 of the Texas Tax Code, as may be amended.

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

“Texas Comptroller” or “CPA” means the comptroller of public accounts of the State of Texas whose duties include the collection and disbursement of sales and use taxes in accordance with Ch. 403 of the Texas Government Code.

“Type B Sales Taxes” means the municipal sales taxes authorized, adopted, imposed or collected by or on behalf of the City pursuant to § 321.101(b) of the Texas Tax Code, as amended or replaced, currently at the rate of one-half of one percent (0.5%), 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 or replaced, and shall also include any other sales taxes now or hereafter authorized, adopted, imposed or collected by or on behalf of the City for use by any other Type B economic development corporation hereafter created by the City.

“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) and/or any other applicable state and/or federal law or regulation.

“Water Impact Fees” shall mean the impact fees charged by the City to the Company to fund or recoup all or part of the cost for water facilities necessitated by and attributable to development of the Property pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.

### **ARTICLE III**

#### **Authority for Agreement and Available Funds**

3.1 Authority. 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 substantial economic benefit will accrue to the City as a result of the development of the Property because, among other things, such development will: (i) promote local economic development and stimulate business and commercial activity in the City; (ii) increase the taxable value of the Property thereby adding value to the City's tax rolls and increasing the ad valorem taxes to be collected by the City; (iii) attract new tenants to the Property which will: (a) increase the taxable value of inventory and business personal property at the Property thereby adding value to the City's tax rolls and increasing the ad valorem personal property taxes to be collected by the City; (b) increase the sales taxes collected by the City; and (c) create new employment opportunities in the City, and accordingly, the value of the benefits of this Agreement to the City outweigh the amount of incentives to be paid by the City under this Agreement.

3.2 Funds Available for Incentive Payment. The Incentive Payments 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. Any Incentive Payment payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Incentive Payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Incentive Payment(s) is to be made.

### **ARTICLE IV**

#### **Term**

Unless this Agreement is sooner terminated by the City or the Company pursuant to a right to terminate expressly provided herein, the Term of this Agreement shall commence on the Effective Date and shall continue until the later of: (i) July 2, 2026 if Company fails to satisfy the Conditions Precedent to Jane Street Reconstruction; (ii) August 1, 2027 if Company satisfies the Conditions Precedent to Jane Street Reconstruction but fails to satisfy the General Conditions; (iii) if the Company satisfies the Conditions Precedent to Jane Street Reconstruction and satisfies the General Conditions and satisfies the Conditions Precedent to Incentive Payment, then through and including the last day that all of the foregoing conditions are continuously satisfied provided that such period shall not exceed a maximum of five (5) years from the date the City issues a certificate of occupancy to Manhattan Project to conduct its business at the Restaurant/Tap Room/Pavilion which must occur on or before July 31, 2029 ("**Term**"). Notwithstanding the foregoing, in the event this Agreement is not fully executed within sixty (60) days after approval by the City Council, then this Agreement shall be null and void and shall have no effect on either Party. Additionally, the Parties agree that this Agreement may be terminated by the City if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any part thereof, invalid, illegal or unenforceable.

## **ARTICLE V**

### **Company's Covenants Regarding Undocumented Workers**

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

5.2 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 knowing violation under 8 U.S.C. § 1324a(f) within thirty (30) days from the date of such conviction.

5.3 Repayment of Incentive Payments in Event of Conviction for Employing Undocumented Workers. If, after receiving any Incentive Payment under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. § 1324a (f), the Company shall pay to the City, not later than the 120<sup>th</sup> day after the date the City notifies the Company of the violation, an amount equal to the total amount of all Incentive Payment payments paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each such Incentive Payment from the date each such 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.

5.4 Limitation on Incentive Payment Payments. The City shall have no obligation to make any Incentive Payment payments 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).

5.5 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.

5.6 Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in this Article of this Agreement shall expressly survive the expiration or termination of this Agreement until payment of the final Incentive Payment or termination of this Agreement.

## **ARTICLE VI**

### **Affirmative Covenants of Company for City's Reconstruction of Jane Street**

The City and Company each agree that as a condition precedent to City's obligation to reconstruct Jane Street as provided herein, Company covenants, warrants and agrees that each and every of the following performance requirements and conditions which represent material obligations of this Agreement must have timely occurred and, if applicable, be then existing (each a "**Condition Precedent to Jane Street Reconstruction**" and collectively the "**Conditions Precedent to Jane Street Reconstruction**");

6.1 Purchase of the Property by Company. On or before December 31, 2025, Company shall have purchased and become the owner of the Property. Failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law.

6.2. Commencement of Construction of the Building. On or before July 31, 2026, Company shall have Commenced Construction of the Building. Failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law.

6.3 Timely Payment of City Development Fees. The Company shall timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees, Sewer Impact Fees, and Water Impact Fees, owed in connection with Commencement of Construction of the Building. Failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law. Company understands and agrees that City is relying upon Company's payment of the foregoing fees to help City pay, in part, for the City's reconstruction of Jane Street as provided below and, as such, the Company understands and agrees that all such fees are nonrefundable regardless of whether Company moves forward with construction of the Building. Company hereby waives any and all rights, at law or in equity, to claim a refund for any of the foregoing fees.

6.4 Dedication of Right-of-Way. On or before July 31, 2026, Company shall have dedicated to the City as public right-of-way, or transferred to the City a fee simple interest, the areas shown on the first page of Exhibit B designated as "PARALLEL PARKING FOR EMERGENCY VEHICLES ONLY." Failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law.

## **ARTICLE VII**

### **City's Obligation to Reconstruct Jane Street**

Provided the Conditions Precedent to Jane Street Reconstruction in Article VI of this Agreement have occurred, the City covenants, warrants and agrees that it will commence reconstruction of Jane Street to a two-lane, concrete, curb and gutter road with drainage and sidewalk on the west side of Jane Street in accordance with City standards from Highway 80 to the location where the southern end of the Property meets Jane Street. Such reconstruction shall include construction of the areas shown on the first page of Exhibit B designated as "PARALLEL PARKING FOR EMERGENCY VEHICLES ONLY."

## ARTICLE VIII

### Additional Affirmative Covenants of Company

Company additionally covenants, warrants and agrees that each and every of the following performance requirements and conditions which represent material obligations of this Agreement must timely occur. The City and Company further agree that each of the following constitute a condition precedent to the receipt by Company of any Incentive Payment pledged by the City in Article X below and, if applicable, be then existing (each a “**General Condition**” and collectively the “**General Conditions**”):

8.1 Completion of Construction of the Building. Subject to Force Majeure, on or before July 31, 2027, Company shall Complete Construction of the Building. Except as aforesaid, failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law.

8.2 Lease Requirement. On or before July 31, 2027, Company shall satisfy the Lease Requirement with respect to the Building and shall deliver to the City a copy of the lease executed by Company and Manhattan Project, redacted if necessary to remove proprietary or confidential information. Failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law.

8.3 Issuance of Certificate of Occupancy for Manhattan Project. Subject to Force Majeure, on or before July 31, 2027, Manhattan Project shall obtain from the City a certificate of occupancy for occupancy of its lease space and operation of its business in the Building. Except as aforesaid, failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law.

8.4 Occupation of Building by Manhattan Project. Subject to Force Majeure, on or before July 31, 2027, and continuing for a seven (7) year period thereafter, Manhattan Project shall occupy at least fifty percent (50%) of the Building. Except as aforesaid, failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law.

8.5 Operation of Business by Manhattan Project. Subject to Force Majeure and temporary closures for repairs and casualty events, on and or before July 31, 2027 and continuing through the date the City issues the final Incentive Payment due under this Agreement, Manhattan Project shall remain open for business during usual and customary hours and actively operate a business in its lease space in the Building for producing, packaging and distributing beverage products. Except as aforesaid, Failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under

this Agreement. This is in addition to any other remedies available to the City under this Agreement or law.

8.6 Timely Payment of City Development Fees. The Company shall timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees, Sewer Impact Fees, and Water Impact Fees, in connection with the Building and Restaurant/Tap Room/Pavilion. Upon Completion of Construction of the Building and receipt of a shell certificate of occupancy, Company covenants and agrees to submit to the City proof of payment of said fees relating to the Building. Further, upon Completion of Construction of the Restaurant/Tap Room/Pavilion and receipt of a certificate of occupancy by Manhattan Project for business at the Restaurant/Tap Room/Pavilion, Company covenants and agrees to submit to the City proof of payment of said fees relating to the Restaurant/Tap Room/Pavilion. Failure of the Company to timely comply with this section will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement. This is in addition to any other remedies available to the City under this Agreement or law. Company understands and agrees that City is relying upon Company's payment of the foregoing fees to help City pay, in part, for the City's reconstruction of Jane Street as provided below and, as such, the Company understands and agrees that all such fees are nonrefundable regardless of whether Company moves forward with construction of the Building. Company hereby waives any and all rights, at law or in equity, to claim a refund for any of the foregoing fees.

8.7 Documentation. Company shall deliver to the City within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Company with its covenants in this Article.

8.8 Ongoing Operation. Company shall operate the Property exclusively for only the uses permitted under the current zoning applicable to the Property during the Term of this Agreement.

8.9 Inspections. Company shall provide the City, its agents and employees with access to the Property and Building at such times as the City may reasonably request to conduct such inspections as the City reasonably deems necessary in order to confirm compliance by the Company with the terms and provisions of this Agreement, subject to the rights of tenants; provided, however, that the City shall not unreasonably interrupt the operations of any tenants or users at the Property.

8.10 Company Representative. Company shall provide a representative of the Company to accompany the City during all inspections of the Property conducted by the City

8.11 Payment of Taxes. All ad valorem taxes assessed against the Property during the Term of this Agreement shall be paid prior to the date such taxes become delinquent regardless of whether owed or paid by Company, Tenants or others.

8.12 Compliance with Applicable Laws. Company agrees to maintain the Property and Building in good repair and condition at all times, which at a minimum shall mean meeting or exceeding all Federal, State and Local laws and regulations, including but not limited to the City's



Code of Ordinances and terms of this Agreement, applicable to the Property and the activities thereon.

8.13 Other Agreements. Company shall 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 all other agreements now or hereafter existing between the Company and the City.

8.14 Ownership. Company shall not sell, convey, or transfer ownership of the Property during the Term of this Agreement without the written consent of the City.

## **ARTICLE IX**

### **Conditions Precedent of Company for Incentive Payment**

The City and Company each agree that as a condition precedent to the receipt by Company of any Incentive Payment pledged by the City, Company additionally covenants, warrants and agrees that each and every of the following performance requirements and conditions which represent material obligations of this Agreement must timely occur. The City and Company further agree that each of the following constitute a condition precedent to the receipt by Company of any Incentive Payment pledged by the City in Article X below and, if applicable, be then existing (each a “**Condition Precedent to Incentive Payment**” and collectively the “**Conditions Precedent to Incentive Payment**”):

9.1 Conditions Precedent to Jane Street Reconstruction. All Conditions Precedent to Jane Street Reconstruction provided in Article VI of this Agreement shall have been timely performed.

9.2 General Conditions. All General Conditions provided in Article VIII of this Agreement shall have been timely performed and each General Condition requiring on-going performance shall have been performed without interruption as required herein and be in compliance with this Agreement at the time of payment of each Incentive Payment.

9.3 Sales Taxes Reports. The City shall have obtained from the Texas Comptroller a confidential information report confirming at a minimum the total amount of sales and use taxes paid by Manhattan Project to the Texas Comptroller only for sales of Taxable Items at the Restaurant/Tap Room/Pavilion during the previous Incentive Tax Period (which report the City agrees to use diligent, good faith efforts to timely obtain), and the City shall have verified that it has received payment in full of all City Sales Taxes payable by Manhattan Project for such sales for the Incentive Tax Period for which the Request for Payment is submitted, and the City agrees to use diligent, good faith efforts to promptly verify such information. Notwithstanding the foregoing, pursuant to the Disclosure Statute, the State Comptroller is to disclose the sales taxes paid during the current or prior year without disclosing individual sales tax account information. However, if there are fewer than three (3) sales tax accounts at the Property, the State Comptroller will not disclose information regarding the actual sales taxes paid from operations at the Property without permission of those persons doing business on the Property. As such, the Company covenants and agrees to use good faith, commercially reasonable efforts to include as a condition in its lease or lease renewal or amendments for the Restaurant/Tap Room/Pavilion with Manhattan Project language that requires the Company and Manhattan Project to provide a release to the City that will allow the Texas Comptroller, if so required

by the Disclosure Statute, to disclose to the City aggregated sales tax information relating to any business generating sales tax at the Restaurant/Tap Room/Pavilion for any Incentive Tax Period during the Term. The Parties agree that no Incentive Payment shall be due or payable for any Incentive Tax Period during the Term if the Company fails to provide written permission from the Company and Manhattan Project allowing the State Comptroller to provide the City with information relating to the amount of City Sales Taxes paid by Manhattan Project to the City during such Incentive Tax Period.

9.4 Annual Filings for Payment of Incentive Payments. The Company shall have submitted to the City the following documents in connection with each and every request to the City for an Incentive Payment: (a) a written Request for Payment; and (b) a Certificate of Compliance. If Company submits a Request for Payment more than one year after the applicable Incentive Payment is earned by Company, Company agrees it is an irrevocable waiver of Company's right to request said Incentive Payment and the City shall not be obligated to pay the Request for Payment. Any obligation of City to pay a timely submitted and valid Request for Payment shall expressly survive the Term.

## **ARTICLE X**

### **Incentive Grants and Incentive Payments**

10.1. Incentive Grants. Provided all Conditions Precedent to Incentive Payment in Article IX of this Agreement have been satisfied and, if applicable, are then continuing and Company has complied with all obligations under this Agreement, then for each Incentive Tax Period during the Term, the City agrees to provide Company the following Incentive Grants: (a) an annual Sales Tax Incentive that pays to Company an amount equal to the Net City Sales Taxes generated by Manhattan Project for Taxable Sales occurring from operation of its business at the Restaurant/Tap Room/Pavilion for the respective Incentive Tax Period; and (b) an annual Ad Valorem Tax Incentive that pays to Company an amount equal to fifty percent (50%) of the ad valorem taxes on the real property and improvements, but not on the business personal property, all as reported by the Dallas Central Appraisal District, paid by Company to the City relating to the Property for that respective Incentive Tax Period. The total and cumulative amount of the Incentive Grant is capped at and shall not exceed the Maximum Incentive Amount.

#### 10.2 Sales Tax Incentive Payment.

A. Provided all applicable Conditions Precedent to Incentive Payment in Article IX of this Agreement have been satisfied and are then continuing and subject to Company's compliance with all obligations under this Agreement, the City shall, following the end of each Incentive Tax Period and within thirty (30) days after receiving a Request for Payment from Company, make a request to the State Comptroller pursuant to Subsection (b) of the Disclosure Statute, will use diligent, good faith efforts to cause the State Comptroller to promptly provide the City Sales Tax information, and within seventy-five (75) days after receiving such information will calculate and, provided all Conditions Precedent are satisfied, pay to the Company the Sales Tax Incentive payment for such Incentive Tax Period.

B. Verification of City Sales Tax. The City and the Company agree that reports received by the City from the Texas Comptroller, if requested, reflecting City Sales Taxes

paid by Manhattan Project relating to Taxable Sales made from Manhattan Project's locations are accurate and definitive for purposes of this Agreement, and the City shall have no right to review or audit records of the Company or Manhattan Project, their successors, assigns or lessees. The Company acknowledges that sales tax information, records and reports are confidential under the laws of the State of Texas and accordingly, the Company agrees that it shall have no right to review or audit any sales tax information, records or reports in the possession of the City including, without limitation, any confidential information reports obtained by the City pursuant to this Agreement and the Disclosure Statute. In the event the Disclosure Statute is hereafter amended or a new law is enacted requiring additional consents and/or information to obtain any information necessary for the City to calculate the amount of any Sales Tax Incentive payment payable pursuant to this Agreement, no sums payable pursuant this Agreement shall be due or payable unless and until the Company provides the City with such additional consents and/or information; provided, (a) that the City will pay such amounts as it may be able to determine from the information so provided, with the balance to be paid in accordance with this Agreement when such additional consents and/or information is provided, and (b) any change in law shall not impact the City's obligation to make payment of any Sales Tax Incentive payments previously earned and owed by the City to the extent not prohibited by applicable law.

C. Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City's obligation to pay any Sales Tax Incentive payment due under the terms of this Agreement shall be deferred if the Texas 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 Manhattan Project relating to Taxable Sales made from its locations; and (ii) calculate the amount of such Sales Tax Incentive payment; provided, that (A) the City will continue to use diligent, good faith efforts to cause the Texas Comptroller to provide the City the necessary information, (B) the City will provide updates to the Company upon request of the status of obtaining the necessary information, (C) the City will pay any portion of the applicable Sales Tax Incentive payment for which it has received the necessary information and (D) the due date for payment to the Company of the applicable Incentive Payment (or the balance thereof if a portion has been paid under the previously clause (C)) shall be extended until such time as the necessary information is received by the City, at which point the payment will be made in accordance with the other terms of this Agreement, and this obligation shall survive the expiration of this Agreement.

### 10.3 Ad Valorem Tax Incentive Payment.

A. Provided all applicable Conditions Precedent to Incentive Payment in Article IX of this Agreement have been satisfied and are then continuing and subject to Company's compliance with all obligations under this Agreement, the Ad Valorem Tax Incentive payment shall be payable by the City to Company in annual payments during the respective Incentive Tax Periods on the later of: (i) June 1<sup>st</sup> of the calendar year following the Incentive Tax Period for which the incentive payment is payable; or (ii) sixty (60) days after Company's payment of all ad valorem taxes owed to City by Company for said Incentive Tax Period.

B. **Other Taxing Entities.** The Parties acknowledge and agree that ad valorem taxes assessed or collected against the Property 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 Incentive Payment payable under the terms of this Agreement.

10.4. **Funds Available for Payment of Economic Development Incentives.** The Incentive Grants payable by the City to 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 Incentive Grants payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Incentive Payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Incentive Payment is to be made. The provisions of this Article X, Section 10.4, shall expressly survive the expiration or termination of this Agreement.

10.5 **Survival.** The City's obligation to make an Incentive Payment earned by Company and due and owing by the City shall expressly survive the expiration or termination of this Agreement (including the "Term" aforesaid).

10.6 **Maximum Incentive Amount.** The Company and the City agree that the City's total and cumulative amount of Incentive Payments shall never exceed the Maximum Incentive Amount which is two hundred fifty thousand dollars (\$250,000.00).

## **ARTICLE XI Defaults and Remedies**

11.1 **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 the failure of the Company to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by Company under the terms of this Agreement and, except as otherwise provided herein, such failure continues for thirty (30) days after written notice by the City to the Company; or (iii) upon failure of the Company to maintain the Property and improvements thereon in good repair and condition at all times as determined by the City (effects of casualty and normal wear and tear excepted), which at a minimum shall mean meeting or exceeding all Federal, State and Local laws and regulations, including but not limited to the City's Code of Ordinances and terms of this Agreement, applicable to the Property and the activities thereon and such failure continues for thirty (30) days after written notice by the City to the Company.

11.2 **City Default.** The City shall be in default of this Agreement upon the failure of the City 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 thirty (30) days after written notice by the Company to the City, provided that no default may be found to have occurred if performance has commenced to the reasonable satisfaction of the Company within thirty (30) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance. Notwithstanding the foregoing, in the event the City fails to timely pay any Incentive Payment, the Company shall provide written notice

of such failure to the City and the City shall have thirty (30) days to make such Incentive Payment before a City default exists.

**11.3 City Remedies.** In the event of a Company default that has continued uncured beyond any applicable grace or cure period or a Company default that is not subject to any applicable grace or cure period, which are defaults for violations of section 6.1, 6.2, 6.3, 6.4, 8.1, 8.2, 8.3, 8.4, 8.5 or 8.6 of this Agreement, then the City shall have no obligation to pay any then-owed or future Incentive Payment to the Company and the City shall have the right as its sole remedies to: (i) recapture all or a portion of the Incentive Payment(s) paid by the City to the Company as more fully set forth in Section 8.4 below; and (ii) terminate this Agreement by written notice to the Company in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. Notwithstanding anything to the contrary contained herein, in no event will the City be entitled to the recovery of attorneys' fees (except in the event of the exercise of the City of the remedies set forth in Chapter 2264 of the Texas Government Code) or consequential, punitive, exemplary or speculative damages.

**11.4 Recapture of Incentives Payment(s).** In the event Company violates section 6.1, 6.2, 6.3, 6.4, 8.1, 8.2, 8.3, 8.4, 8.5 or 8.6 of this Agreement, then the City shall have no obligation to make any then-owed or future Incentive Payment to the Company, and the Company shall immediately pay to the City the sum equal to fifty percent (50%) of all Incentive Payments 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 to be calculated from the date such Incentive Payment was paid by the City to the Company until the date the said sum 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. Upon the occurrence of any other Company default that has continued uncured beyond any applicable grace or cure period, the Company shall immediately pay to the City the sum equal to fifty (50%) of any Incentive Payment paid by the City to the Company for the year prior to the date of the uncured default plus interest at the rate equal to the lesser of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest to be calculated from the date such Incentive Payment was paid by the City to the Company until the date the said sum 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.

**11.5 Company Remedies.** Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, the Company shall have the right as its sole remedies to (a) terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, and (b) recover from the City the amount of any Incentive Payment then earned and owed by the City as damages in accordance with the following provisions. 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, or otherwise, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount of the Incentive Payment then earned by the Company and due and payable by the City under this Agreement;
2. any Incentive Payment past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate; and
3. the recovery of damages against the City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits, and shall not include any Incentive Payment not earned by the Company and owed by the City to the Company at the time an action is filed.

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

## **ARTICLE XII**

### **Miscellaneous Provisions**

12.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, 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 Company to any Person without the prior written consent of the City, which may be withheld in the City's sole discretion. The sale, transfer or assignment of a controlling interest in the shares, membership, partnership or other equity interests in the Company shall constitute an assignment of this Agreement and the failure of Company, as applicable, to obtain the prior written consent of the City prior to such sale, transfer or assignment of such equity interests shall constitute an assignment of this Agreement and a breach of this Agreement. Any approved assignment shall require the Company and each assignee(s) to be jointly and severally liable with the Company for all agreements, covenants, obligations and liabilities of the Company under this Agreement. Furthermore, neither the Company nor any approved assignee shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, encumber or otherwise transfer any interest under this Agreement without obtaining the City's prior written consent, which may be withheld in the City's sole discretion. Any consent by the City to an assignment of this Agreement shall apply only to the specific transaction authorized and shall not constitute a waiver of the consent for any subsequent assignment. Any purported assignment in violation of this Agreement shall be void and of no force or effect.

12.2 Notices. Any notice and/or certificate or statement required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered properly given if mailed by United States mail, certified mail, return receipt requested, in a postage paid envelope addressed to the Party at the address set forth below, or by delivering same in person to the intended addressee by hand delivery or by a nationally recognized courier service such as Federal Express or United Postal Service. Notices mailed by certified mail as set forth above shall be effective upon deposit

in the United States mail. Notice 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: 80 Jane Industrial, LLC  
9452 Hobart Street  
Dallas, Texas 75218-2717  
Attn: Stephen Graham

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

12.3 Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the 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.

12.4 Remedies Cumulative. Except as expressly limited herein, each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

12.5 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.

12.6 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.

12.7 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 nor against any Party.

12.8 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.

12.9 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.

12.10 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.

12.11 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.

12.12 No Third-Party Beneficiaries. The Parties to this Agreement do not intend to create any third-party beneficiaries of the contract rights contained herein including, but not limited to, Manhattan Project. 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.

12.13 No Acceleration. All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

12.14 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.

12.15 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.

12.16 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.



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

12.18 City Council Authorization. This Agreement was authorized by resolution of the City Council approved at a City Council meeting following a public hearing on the matter.

12.19 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 Section 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 Section 10.19 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

12.20 Non-Collusion. The Company represents and warrants that neither Company nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

12.21 Ethics Disclosure. Company represents that it has completed a Texas Ethics Commission ("TEC") form 1295 (Form 1295) generated by the TEC's electronic filing application in accordance with the provisions of Texas Government Code 2252.908 and the rules promulgated by the TEC. The Parties agree that, with the exception of the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295. The information contained in the Form 1295 has been provided solely by the Company

and the City has not verified such information. City agrees to acknowledge receipt of the Form 1295 on the Texas Ethics Commission website within 30 days of receipt of the Form 1295 from Company.

12.22 Reservation of Legislative Authority. Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.

12.23 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.

12.24 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

12.25 Dispute Resolution. Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any Party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The Parties shall endeavor to resolve their claims by non-binding mediation for a period not to exceed sixty (60) days from the date of the claim. City and Company shall share the costs of mediation equally. The mediation shall be held in Dallas County, Texas, unless another location is mutually agreed upon.

12.26 No Permit. This Agreement does not constitute a permit pursuant to Chapter 245 of the Texas Local Government Code and or any City code or regulation and does not vest any rights to the Company pursuant thereto. The City does not, by entering into this Agreement, concede or agree that there are any developer rights or obligations arising under Chapter 245 of the Texas Local Government Code and the City reserves all rights and defenses against any such assertion.

12.27 Statutory Verifications. Company makes the following representation and covenants to enable the City to comply with Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended (the "**Government Code**"), in entering into this Agreement. As used in such verifications, "affiliate" means an entity that controls, is controlled by, or is under common control with the Company within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Agreement, notwithstanding anything in this Agreement to the contrary.

- a. Not a Sanctioned Company. 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, Government Code. The foregoing representation 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.

b. *No Boycott of Israel.* Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. As used in the foregoing verification, “boycott Israel” has the meaning provided in Section 2271.001, Government Code.

c. *No Discrimination Against Firearm Entities.* Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning provided in Section 2274.001(3), Government Code.

d. *No Boycott of Energy Companies.* Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, “boycott energy companies” has the meaning provided in Section 2276.001(1), Government Code.

12.28 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same, including:

|            |   |
|------------|---|
| Exhibit A: | Depiction of Property                     |
| Exhibit B: | Depiction of Restaurant/Tap Room/Pavilion |

**12.29 WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY 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, EXEMPLARY OR SPECULATIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS. THIS SUBSECTION SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

12.30 Report Agreement to Comptroller’s Office. City agrees to report this Agreement to the Texas State Comptroller’s office within fourteen (14) days of the Effective Date of this Agreement, in accordance with § 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

12.31 Sovereign Immunity. No Party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.

12.32 Date for Performance. If a deadline or date falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of the next business day.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE ON FOLLOWING PAGE]*

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

**ATTEST:**

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

By: \_\_\_\_\_  
Sonja Land  
City Secretary  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Cliff Keheley  
Title: City Manager  
Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
City Attorney

**COMPANY:**

**80 Jane Industrial,  
a Texas limited liability company**

By: \_\_\_\_\_  
Name: Stephen Graham  
Title: Manager

Date: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on \_\_\_\_\_, 2025 by Stephen Graham, Manager of 80 Jane Industrial, LLC, a Texas limited liability company, on behalf of the said limited liability company.

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

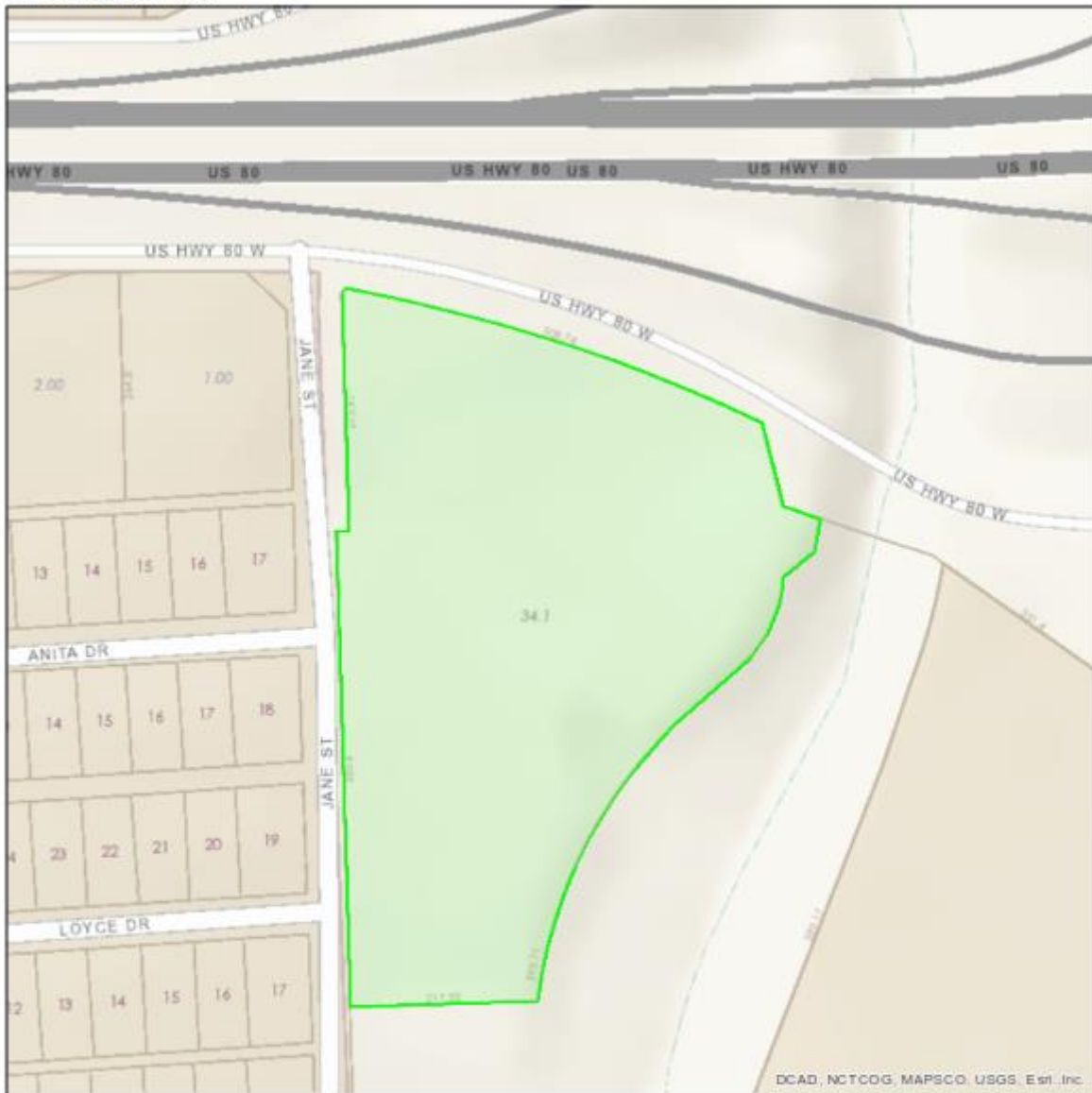
**EXHIBIT A  
TO  
CHAPTER 380 ECONOMIC DEVELOPMENT & PERFORMANCE AGREEMENT**

**Depiction of Property**

## 2100 E. US Hwy 80

Date of copy: 8/22/2025

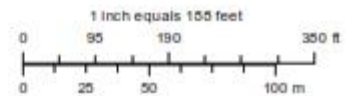
DCAD Tax Account: 65146262310340100



This product is for INFORMATIONAL purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



  
 Dallas Central Appraisal District  
 2949 N Stemmons Freeway  
 Dallas, TX 75247-6195  
 (214) 631-1342  
[www.dallascad.org](http://www.dallascad.org)



DCAD, NCTCOG, USGS, Esri, Inc.

# **EXHIBIT B TO CHAPTER 380 ECONOMIC DEVELOPMENT & PERFORMANCE AGREEMENT**

## **Depiction of Restaurant/Tap Room/Pavilion**

