

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
SP VENTURES, L.L.C.
AND
THE CITY OF WATAUGA, TEXAS**

This Chapter 380 Economic Development Agreement (this “*Agreement*”) is entered into between **SP Ventures, L.L.C.**, (the “*Owner*”), and **the City of Watauga, Texas**, a home rule city (the “*City*”). Owner and City may be collectively referred to as “Parties” or each individually referred to as a “Party.”

RECITALS

WHEREAS, Section 380.001 of the Local Government Code provides that “[t]he governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;” and

WHEREAS, on or around March 27, 2017, the City adopted Resolution No. 17-03-24-06, establishing the City of Watauga Economic Development Incentive Policy and Program (the “*Program*”) which establishes guidelines for the City’s consideration and award of certain economic incentives, including economic grants, loans or other incentives as authorized by Chapter 380 of the Texas Local Government Code, the Texas Constitution and other applicable laws; and

WHEREAS, the City Council of the City of Watauga finds, after participating in a pre-application conference with City Economic Development staff, the Owner submitted an application for economic incentives on or around June 1, 2021, in accordance with the Program; and

WHEREAS, the City Council finds that the application has been reviewed and analyzed by City Economic Development Staff and that the proposed incentives have been presented to City Council; and

WHEREAS, the City Council finds that the provision of economic development incentives under the Program to the Owner for the development of the Property will promote local economic development and stimulate business and commercial activity in the municipality; and

WHEREAS, the City Council desires to provide certain economic development grants to the Owner in recognition of the positive economic benefits which will accrue to the City through the Owner’s development of two parcels of land consisting of an approximate total of 1.6 acres, located in the territorial limits of the City of Watauga, Tarrant County, Texas, as more particularly described in the attached **Exhibit “A”** (the “*Property*”), as a retail project; and

WHEREAS, the Owner expects to purchase a portion of the Property and lease the remainder of the Property during the term of this Agreement; and

WHEREAS, the City Council desires to offer incentives to the Owner over a period of time which will enable the Owner to develop the Property for construction and operation of two packaged liquor retail stores; and

WHEREAS, the City Council finds development of the Property will add significant new revenue to the City's tax base and will create jobs, which will help stimulate the overall local economy; and

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Owner agree as follows:

1.
Authority

The Parties' execution of this Agreement is authorized by Chapter 380, Texas Local Government Code, and constitutes a valid and binding obligation of each Party.

2.
Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

2.1 "Act of Default or Default" means failure to timely, fully, and completely comply with one or more requirements, obligations, performance criteria, duties, terms, conditions, or warranties, as stated in this Agreement. City may, in its sole discretion, accept substantial compliance, which is an act of default, in lieu of full compliance by waiving such act of default solely by an instrument in writing.

2.2 "Chapter 380 Payment(s)" means the incentive payments made to Owner in accordance with this Agreement.

2.3 "City Manager" means the City Manager of the City of Watauga or his or her designee.

2.4 "Compliance" means timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty, condition or warranty as stated in this Agreement. Compliance shall not mean substantial compliance. Failure to achieve Compliance shall be an Act of Default unless waived in writing by City.

2.5 "Comptroller" means the Office of the Texas Comptroller or its successor agency.

2.6 "Effective Date" means November 15, 2021.

2.7 “Force Majeure” means severe weather such as tornadoes or flooding, wars, riots and the unavailability of necessary and essential equipment and supplies from all sources.

2.8 “Packaged Liquor Retail Space” means that space under roof and air conditioned and heated and ready for finish-out work for operation of a package liquor store.

2.9 “Open for Business” means that space under roof and air conditioned and heated facility that is open for full-time business operations with a full line of package liquor products for which a Certificate of Occupancy has been issued.

2.10 “Owner” means SP Ventures, L.L.C., a Limited Liability Corporation incorporated and authorized to do business in the State of Texas, and whose principal place of business is 4940 N. Tarrant Parkway, Fort Worth, Texas 76244 and any assignees of Owner whose assignments comport with the provisions of section 11.7 of this Agreement

2.11 “Program” means the economic development program established by the City as authorized by Chapter 380, *Texas Local Government Code*, to promote local economic development and stimulate business and commercial activity within the City.

2.12 “Phase 1” shall mean the retail store located on Denton Highway, as further described in Exhibit “A”, consisting of approximately 6,000 square feet.

2.13 “Phase 2” shall mean the retail store consisting of approximately 4,000 square feet located on Rufe Snow, as further described in Exhibit “A”, or at another location on Rufe Snow as approved by the City Manager.

2.14 “Phases” means Phase 1 and Phase 2 .

2.15 “Project” means Owner's development of the Property as retail space dedicated to retail alcohol sales uses, and associated improvements and infrastructure.

2.16 “Sales Tax Revenues” means the amount of sales and use tax remitted to the City from the Comptroller, net of Comptroller fees, and excluding any sales and use taxes received on behalf of the City’s Economic Development Corporation and the City’s Crime Control and Prevention District. Sales Tax Revenues shall only be derived from sales and use tax collected by Owner operating at the Project.

3. **Term**

This Agreement will become enforceable upon the Effective Date and will terminate upon (a) six (6) years after the Effective Date; (b) payment by the City of Chapter 380 Payments not to exceed One Hundred Forty Thousand Dollars (\$140,000.00), or (c) termination in accordance with other provisions of this Agreement, whichever occurs first. In recognition of the fact that Chapter 380 Payments are paid to Owner by City after Sales Tax Revenues have been remitted to the City by the Comptroller, the obligation of City to make Chapter 380 Payments relating to Sales Tax Revenues remitted to the City by the Comptroller during the Term of the

Agreement shall survive the Term of this Agreement, unless the Agreement is otherwise terminated in accordance with other provisions of this Agreement. Such obligation shall only survive provided that Owner has complied with all other obligations of the Agreement, including but not limited to the submission of a payment request approved by the City Manager in compliance with this Agreement, such approval being secured prior to the date established in the first sentence of this Section. Only one Chapter 380 Payment shall be required after such date.

4.

Owner's Performance Criteria

4.1 In consideration of the City's commitments hereunder, the Owner agrees to commence the design, permitting and construction of the Project and diligently pursue same as follows:

4.1.1 Initial Acquisition; Commencement of Project

If the Owner has not commenced construction of the Project within eighteen (18) months of the Effective Date of this Agreement, this Agreement will be terminated without further notice and will be of no further force and effect, wherein neither City nor Owner shall have any liabilities or obligations whatsoever to the other party, provided no Chapter 380 Payments shall have been paid to the Owner.

4.1.2 Construction, Open for Business and Investment

Unless the Owner fails to acquire the Denton Highway property or has not commenced construction on as provided in Subsection 4.1.1 of this Agreement, Owner must construct a minimum of six thousand (6,000) square feet of Packaged Liquor Retail Space in one or more locations on the Property which is Open for Business and must invest at least Three Million, Five Hundred Thousand Dollars (\$3,500,000) within twenty-four (24) months of the acquisition of the Denton Highway property. Proof of investment shall be documented to the satisfaction and approval of the City Manager; such approval shall not be unreasonably withheld. Upon the City Manager's verification of proof of investment, the City Manager shall provide written certification of same and retain such certification with the official economic development records of the City. Failure of Owner to acquire the Denton Highway property or to comply with this subsection constitutes a breach of the Agreement subject to the default provisions in Section 9 herein, and repayment to City of all Chapter 380 Payments paid to Owner under this Agreement.

4.1.3 Phases and Design and Construction Criteria

The Project may be constructed in Phases. The Project shall be designed and constructed as an off-premises consumption packaged liquor retail store or stores of an interior and exterior quality equal to or greater than the store located at 4940 North Tarrant Parkway, Fort Worth, Texas, in terms of construction, building materials, elevations, internal finish-out, and furnishings. The interior shall be generally consistent with the depiction attached as **Exhibit "B1"**. Thirty percent of the exterior walls, excluding windows and doors, shall be constructed of masonry and shall be of a contemporary design generally consistent with **Exhibit "B2"**. Primary colors shall be prohibited, except that

primary colors may be used for lighting. Without limitation, the Owner agrees to comply with all applicable codes, permits and regulations of all governmental authorities having jurisdiction over the Project, including the City.

4.2 Abandonment of Project

If, after work on the Project has commenced but prior to the time period required for the Property to be Open for Business, the City Manager reasonably determines that the Owner has abandoned the Project, such abandonment constitutes a breach of the Agreement subject to the default provisions in Section 9 herein. The City Manager may reasonably determine that the Project is abandoned for the purposes of the Agreement if, after commencement of construction, the City Manager determines no evidence of measurable work toward completion of the Project has occurred during a period of 90 days or longer.

4.3 Request for Payments

Owner shall be required to submit to the City quarterly written requests for Chapter 380 Payments with required documentation of compliance with this Agreement

5.

City's Performance Criteria

5.1 Chapter 380 Payments

As limited by Section 3, City shall pay Owner Chapter 380 payments, subject to Owner's compliance with Owner's Performance Criteria in Section 4 above and as further provided in this Section 5, provided Owner has timely and fully complied with all other applicable terms and conditions contained in this Agreement.

In no event shall City be required to make any Chapter 380 applicable to Phase 1 payments prior to the expiration of sixty (60) days after the occurrence of the latter of the City's first receipt of Sales Tax Revenues attributable to Phase 1 after Phase 1 is Open for Business and Owner's written request for payment with required documentation of compliance as provided in Section 4.3. In no event shall City be required to make any Chapter 380 payments applicable to Phase 2 prior to the expiration of sixty (60) days after the occurrence of the latter of the City's first receipt of Sales Tax Revenues attributable to Phase 2 after Phase 2 is Open for Business and Owner's written request for payment with required documentation of compliance as provided in Section 4.3. In no event shall City's performance date be accelerated by any act of Owner. Chapter 380 Payments are not required until such time as discrepancies between Owner's payment request and the receipt of Sales Tax Revenues attributable to the applicable Phase, if any, are reconciled to the City Manager's satisfaction and approval; such approval shall not be unreasonably withheld.

City shall not be obligated to make any Chapter 380 Payments to Owner until such time as Sales Tax Revenues attributable to the Project have been remitted to City by the Comptroller, provided within thirty (30) months after the Effective Date (1) at least six thousand (6,000) square feet of Packaged Liquor Retail Space with the Project are Open for Business and (2) an investment of at least Three Million, Five Hundred Thousand Dollars (\$3,500,000) is certified by the City Manager.

5.2 Timing and Amount of Chapter 380 Payments

As limited by Section 3 and Subsection 5.1, the amount of Chapter 380 Payments shall equal a percentage of the Sales Tax Revenues generated by Owner at the Project as calculated by Schedule “A” below and shall be due in accordance Schedule “A” below.

Schedule “A”		
Year of Term	City’s Performance Requirements	City’s Time of Performance
1	6.5% of Sales Tax Revenues	Quarterly within the occurrence of the latter sixty (60) days after remittance of City’s Sales Tax Revenues to City and the City Manager’s approval of the Owner’s written request for payment
2-3	65% of Sales Tax Revenues	
4-5	50% of Sales Tax Revenues	
6	6.5% of Sales Tax Revenues	

6.

Owner’s Additional Covenants, Warranties, Obligations and Duties

6.1 Owner makes the following covenants and warranties to City and agrees to timely and fully perform the following obligations and duties. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this Agreement shall be an Act of Default by Owner. Failure to comply with any one covenant or warranty shall constitute an Act of Default by Owner.

6.1.1 Owner is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

6.1.2 The execution of this Agreement has been duly authorized by the Owner and the individual signing this Agreement is empowered and authorized to execute the Agreement on behalf of Owner and bind the Owner. Said authorization, signing and binding is not in contravention of any law, rule or regulation, or of the provisions of Owner’s articles of incorporation or by-laws, or of any agreement or instrument to which Owner is a party or by which it may be bound. Evidence of such authority shall be provided to the City in form and manner acceptable to the City and shall be attached hereto as **Exhibit “C”** at the time of execution. The execution and performance of this Agreement by the Owner does not require the consent or approval of any person which has not been obtained.

6.1.3 No litigation or governmental proceeding is pending or, to the knowledge of Owner or Owner’s officers, threatened against or affecting Owner that may result in any material adverse change in Owner’s business, properties or operation. No consent, approval or authorization of registration or declaration within any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.

6.1.4 No application, certificate or statement delivered by Owner to City contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.

6.1.5 There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Owner has not been informed of any potential involuntary bankruptcy proceedings.

6.1.6 To the Owner's actual knowledge, Owner has acquired and maintained all necessary rights, licenses, permits and authority to carry out its business in Watauga, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

6.1.7 The funds herein granted shall be utilized solely for the purpose of offsetting the cost of Project as described herein located within the city limits of Watauga, Texas.

6.1.8 Owner shall timely pay all taxes due and owing by it to all taxing authorities having jurisdiction. In addition, Owner shall timely pay all employment, income, franchise, and all other taxes due and owing by it to all local, state, and federal entities.

6.1.9 Owner shall timely begin and complete the Project required by this Agreement.

6.1.10 Owner shall timely and fully comply with all the terms and conditions of this Agreement.

6.1.11 Owner shall notify City in writing of any changes in management within seven (7) days.

6.1.12 Owner agrees that, as to all of the programs and activities arising out of this Agreement, it shall comply fully with all civil rights laws and specifically will not discriminate against any person on the basis of class protected by law.

6.1.13 Owner shall provide a statement or waiver sufficient to provide the City the authority to review the Owner's reported sales tax information on a quarterly basis throughout the Term of this Agreement.

6.1.14 Insurance. Throughout the term of this Agreement, Owner shall, at its expense, maintain in full force and effect, the following insurance:

6.1.14.1 (1) policy of insurance for bodily injury, death, and property damage insuring against all claims, demands or actions relating to the Owner's performance of its obligations pursuant to this Agreement with (1) a policy of comprehensive general liability (public) insurance with a minimum combined single limit of not less than \$500,000 per occurrence for bodily injury, death and property damage with an aggregate of not less than \$1 Million Dollars; (2) policy

of automobile liability insurance covering any vehicles owned and/or operated by the Owner, its officers, agents, and employees, and used in the performance of its obligations hereunder with a minimum of \$1 Million Dollars; and (3) statutory Worker's Compensation Insurance covering all employees involved in the performance of its obligations hereunder.

6.1.14.2 All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insured's as to all applicable coverage with the exception of Worker's Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

6.1.14.3 All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

6.1.14.4 A certificate of insurance evidencing the required insurance shall be submitted prior to commencement of services.

6.1.14.5 City shall be entitled during the term of the contract to require the Owner to increase the amount of required insurance. City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions. Upon such request by City, Owner shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

6.1.14.6 Without limiting any of the other obligations or liabilities of the Owner, the Owner shall require its general contractors, at the general contractor's own expense, to maintain during the term of this Agreement, the required insurance including the required certificate and policy conditions as stated herein.

6.1.15 Employment of Undocumented Workers. Pursuant to Chapter 2264, Texas Government Code, during the term of this Agreement, the Owner is prohibited from knowingly employing any undocumented workers, as that term is defined in Section 2264.001, Texas Government Code and if convicted of a violation under 8 U.S.C. Section 1324a(f), the conviction shall be considered a default of this Agreement from which no cure provisions shall apply. In the event of such conviction of Owner, the City shall provide written notice of the default and this Agreement shall terminate upon receipt of such notice. In such event, Owner shall repay the amount of all Chapter 380 Payment(s) received by the Owner under this Agreement violation within 120 business days after the date the Owner receives written notice of the default plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if

the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date of such notice until paid.

7.

Immediate Suspensions/Termination

7.1 City, under the following circumstances, and at its sole discretion, may suspend its obligations under this Agreement or terminate this Agreement, without liability to Owner, and all future payment obligations shall automatically cease upon any one of the following events, which are an Act of Default.

7.1.1 The appointment of a receiver of Owner, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

7.1.2 The adjudication of Owner as a bankrupt.

7.1.3 The filing by Owner of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

8.

Reporting and Monitoring

8.1 Owner agrees to the following reporting and monitoring provisions, and failure to fully and timely comply with any one requirement shall constitute an Act of Default:

8.1.1 Owner shall provide an annual report certifying the status of Compliance through the Term of this Agreement of all performance requirements. Owner shall provide quarterly requests for payments as required by Section 4.3 of this Agreement.

8.1.2 Owner, during normal business hours shall allow City reasonable access to its records and books and all other relevant records related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement, but the confidentiality of such records and information shall be maintained by City unless disclosure of such records and information shall be required by law. Owner shall reimburse City any and all costs incurred by the City seeking to withhold such records from public disclosure.

8.2 The City Manager shall be responsible for inspecting the Owner's records and books and all other relevant records related to Owner's performance requirements contained in Section 4 of this Agreement. Upon his or her determination of compliance of same, the City Manager shall provide written certification of such determination and direct that same be retained with the official economic development records of the City.

9.

Owner's Liability/Default

9.1 Should Owner fail to timely, fully, and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement such failure shall be an Act of Default by Owner and, if not fully and completely cured and corrected within thirty (30) days after written notice to do so, City as its sole remedy, may terminate this Agreement and cease making any further economic payments. Owner shall, within 90 days written notice by City be required to refund to City all Chapter 380 Payments previously paid to it by City prior to such termination. Owner shall not be liable to City for any alleged consequential damages.

9.2 In the event of unforeseeable third-party delays or Force Majeure and upon a reasonable showing by Owner that it has immediately and in good faith commenced and is diligently and continuously pursuing the correction, removal or abatement of such delays by using commercially reasonable efforts, City shall excuse any such delays. Failure by Owner to use commercially reasonable efforts as required in this Section 9.2 shall be an Act of Default.

9.3 Any delay for any amount of time by City in providing notice of default to Owner shall in no event be deemed or constitute a waiver of such default by City of any of its rights and remedies available in law or in equity.

9.4 Any waiver granted by City to Owner of an Act of Default shall not be deemed or constitute a waiver of any other existing or future Act of Default by Owner or of a subsequent Act of Default of the same act or event by Owner.

9.5 In the event that this Agreement is terminated by City or Owner commits an Act of Default that is not timely corrected and cured, Owner shall immediately return to City all money Chapter 380 Payments previously paid to it by City, and City shall be relieved of any further obligations under this Agreement.

9.6 The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the City from the Owner, 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.

10.

City's Liability Limitations

Should City fail to timely, fully, and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by City and City shall have sixty (60) days to cure and remove the Default upon receipt of written notice to do so from Owner. Owner specifically agrees that City shall only be liable to Owner for the actual amount of the Chapter 380 Payments to be conveyed to Owner and shall not be liable to Owner for any other actual or consequential damages, direct or indirect, or interest for any Act of Default by City under the terms of this Agreement. Payments to

be made to Owner are only required after full compliance of Owner's obligations and the City Manager's required certifications. City shall have sixty (60) days to make payment after receipt of such payment request with supporting documentation.

11.

Miscellaneous Provisions

11.1 Indemnity. It is understood and agreed between the parties that Owner, in performing its obligations hereunder, is acting independently, and City assumes no responsibilities or liabilities in connection therewith to third parties. **OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTION BROUGHT BY ANY THIRD PARTY UNAFFILIATED WITH THE PARTIES TO THIS AGREEMENT OF ANY NATURE WHATSOEVER ARISING OUT OF OWNER'S BREACH OF ITS OBLIGATIONS HEREUNDER. OWNER'S INDEMNIFICATION OBLIGATIONS INCLUDE THE PAYMENT OF REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, AND CAUSES OF ACTION. OWNER SHALL BE RESPONSIBLE FOR ALL FEES INCURRED BY CITY IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, OR CAUSES OF ACTION, EXCEPT CLAIMS ARISING FROM THE GROSS NEGLIGENCE OF THE CITY. NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED TO PROHIBIT CITY FROM ENGAGING REPRESENTATION OF ANY SUCH CLAIM, SUIT OR CAUSE OF ACTION AND OWNER SHALL BE RESPONSIBLE FOR ANY SUCH COSTS AND OR FEES SO INCURRED.**

11.2 Changes in Law. If, during the Term of this Agreement, State law applicable to municipal sales and use taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to Owner under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever discretionary taxes and revenues are legally available to the City to be allocated to the Chapter 380 Payments.

11.3 Mutual Assistance. The City and the Owner each agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist the other in carrying out such terms and provisions in order to put the other in the same economic condition contemplated by this Agreement, regardless of any changes in public policy, the law or taxes or assessments attributable to the Property.

11.4 Permitting. The City agrees to cooperate with the Owner to expeditiously process permits, including plat, applications required for the Project, in accordance with applicable city ordinances and state law.

11.5 Representations and Warranties. The City represents and warrants to the Owner that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. The Owner represents and warrants to the City that it has the requisite authority to enter into this Agreement.

11.6 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

11.7 Assignment.

11.7.1 Except as provided in subsection 11.8.2 below, the Owner may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of the City, which approval will not be unreasonably withheld or delayed.

11.7.2 The City agrees, however, that the Owner may assign all of its rights and obligations under this Agreement to any entity affiliated with the Owner by reason of controlling, being controlled by, or being under common control with the Owner. The City expressly consents to any assignment described in the preceding sentence and agrees that no further consent of the City to such an assignment will be required. The Owner agrees to provide the City with written notice of intent to assign at least thirty (30) calendar days prior to such assignment. The Owner agrees to certify in writing to the City conveyance of an assignment within ten (10) calendar days following any such assignment. All required contact information required for Notice pursuant to Section 11.9 of this Agreement shall be providing in the written intent to assign and the written certification of assignment. Only one assignment may occur under this subsection. Any subsequent assignments must follow the requirements of Subsection 11.7.1 of this Agreement.

11.7.3 No assignment provided for in this subsection 11.7 may occur until the Owner meets its performance obligations under Section 4.1.1 herein. No assignment may occur which divorces rights from obligations of a Party. No partial assignments may occur.

11.8 Notice. Any notice or other communication (“Notice”) given under this Agreement must be in writing and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the party, or an agent of the party; or (iii) by email Notice to the Party. Notice deposited in the mail in the manner specified will be effective two (2) days after deposit. Notice given in any other manner will be effective only when received by the party to be notified. For the purposes of Notice, the addresses of the parties will, until changed as provided below, be as follows:

Owner: Smit Shah
Attn: Smit Shah
4940 N. Tarrant Pkwy
Fort Worth, Texas 76244
Ph: (281) 221-6025
Email: smit@blazinghospitality.com

with a copy to: Rob Pivnick, Esq.
Pivnick Law Firm, PLLC

rob@pivnickfirm.com

City: City of Watauga
7105 Whitley Rd.
Watauga, Texas 76148
Attn: City Manager
Ph: (817) 514-5800
Email:cs0@wataugatx.org

with a copy to: City Attorney
Caroline Kelley
Russell Rodriguez Hyde Bullock, LLP
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628
Ph. (512) 930-1317
Email: ckelley@txlocalgovlaw.com

Either party may designate a different address at any time by giving Notice to the other party.

11.9 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.

11.10 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither the City, nor its past, present or future officers, elected officials, employees, or agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

11.11 Applicable Law. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and venue will lie in Tarrant County, Texas.

11.12 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and it is also the intention of the parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

11.13 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

11.14 No Third-Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

11.15 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

11.16 Exhibits. The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit "A": Property Description

Exhibit "B": Store Specifications

Exhibit "C": Owner Authorization

12. **General Terms**

12.1 Entire Agreement. This Agreement embodies the complete Agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements between the parties relating to matters in this agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.

12.2 Forum Selection. This Agreement and the relationship between City and Owner shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between City and Owner shall be the appropriate court in Tarrant County, Texas. Owner consents to, and waives any objections to, in personam jurisdiction in Tarrant County, Texas.

12.3 Legal Construction. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12.4 Law. This Agreement is subject to all legal requirements in the City Charter and Code of Ordinances of the City of Watauga, Texas and all other applicable County, State and Federal laws, and Owner agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

12.5 Confidential. City, its officers and employees, and its agents or contractors retained to perform economic development services for City, shall treat as confidential the financial statements of Owner and shall not release such information to the public, unless required by law. City shall immediately notify Owner of requests or court orders to release such information.

EXECUTED to be effective as of the date of the last party to sign below:

Exhibit "A"
Property Description

Denton Highway location: Block 7, Lot AR1, Watauga Addition, TAD Account Number 06697437, addressed as 5932 Denton Highway, 1.2039 acres

And

Rufe Snow location: Block 3 Tract A1, Singing Hills Addition, TAD Account Number 02767945, addressed as 6325 Rufe Snow Drive, .3481 acres

Exhibit "B":
Store Specifications

Exhibit B1



Exhibit B2

