

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the **City of Garland, a Texas home-rule municipality** ("City"), and **Shirlee Mae, LLC, a Texas limited liability corporation**, its successors and assigns, and **Andor Properties, LLC, a _____ limited liability corporation**, its successors and assigns, (together as "Developer") acting by and through their respective authorized officers. The City and Developer are referred to individually in this Agreement as a "Party" and together they are referred to as the "Parties."

ARTICLE I

RECITALS

The City and Developer each acknowledge and agree that the following recitals are true and correct and that the same are incorporated herein and are a material part of this Agreement:

WHEREAS, the City desires to further the public interest and welfare and to induce the investment of private resources in productive business enterprises located in certain areas of the City in order to increase tax revenue for real property and business personal property within the City, and promote or develop new business enterprises; and

WHEREAS, Developer intends to repair, renovate and improve commercial space at 500 Main Street to create a restaurant space and a retail/wine shop space and then lease these spaces to Tenants for the operation of restaurant and retail businesses that generates sales tax, on a certain tract of land consisting of approximately 0.18 acres located within the City of Garland, Dallas County, Texas ("Property"), being further described in Exhibit A, which is attached hereto and incorporated herein by reference for all purposes; and

WHEREAS, Developer proposes to invest approximately **\$2,000,000.00** in new real property improvement at the Property ("Project"); and

WHEREAS, the Project will result in new economic development in the City, including serving as a catalyst for further, perhaps related development in the area; will increase tax revenues because of investments in real property, business personal property, and taxable sales within the City; and increases in the number of new jobs; and

WHEREAS, the Project will have a direct and positive economic benefit to the City; and

WHEREAS, the Developer has advised the City that a contributing factor of inducing the Developer to develop the Property is an agreement by the City to provide an economic development incentive to the Developer as set forth herein; and

WHEREAS, the City is authorized by Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to provide a program for economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, City wishes to provide incentives to Developer to assist in the economic development of the City; and

WHEREAS, the City has determined, based on information presented to it by the Developer, that making an economic development incentive grant to the Developer in accordance with this Agreement furthers the City's economic development goals and will: (i) promote the economic development objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) advance local economic development and stimulate business and commercial activity in the City; and

WHEREAS, City hereby finds that this Agreement embodies an eligible Program (defined below) and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City;

NOW, THEREFORE, the Developer and the City make and enter into this Agreement in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both the Developer and the City, and agree as follows:

ARTICLE II

DEFINITIONS

Section 2.01. "Compliance Certificate" has the meaning set forth in Section 4.02.

Section 2.02. "Economic Development Incentive Payment Request" has the meaning set forth in Section 4.02.

Section 2.03. "Performance Rebate Period" means the period of time, as more fully described in below Article III, during which Developer is eligible for Performance Rebate Payments.

Section 2.04. "Performance Rebate Payments" means the City's payments to Developer in the form of rebate payments equal to the amounts expended by Developer or Tenant for Qualified Hard Costs for which a Performance Rebate Payment is requested by Developer in accordance with Article IV.

Section 2.05. "Program" means the economic development program for the Project established by the City pursuant to Texas Local Government Code Chapter 380 to promote

economic development and stimulate business and commercial activity within the City as represented by the terms of this Agreement.

Section 2.06. “Project” has the meaning described in the Recitals to this Agreement.

Section 2.07. “Property” has the meaning described in the Recitals to this Agreement.

Section 2.08. “Qualified Hard Costs” means expenditures actually paid by Developer or paid by Tenant during the Performance Period for the improvement made to the Property which are specifically listed in the Rebate Tracking Sheet Table attached hereto as Exhibit B.

Section 2.09. “Tenant” means one or more person or entity which during the Performance Period holds a leasehold estate in the Property which is owned by Developer for the purpose of operating one of more restaurants or retail that generates sales tax on the Property.

ARTICLE III

COMMENCEMENT, COMPLETION AND OPERATION OF THE PROJECT

Section 3.01. Commencement of the Project. Developer shall enter into lease agreements with Tennant to occupy and operate one or more restaurants or retail that generates sales tax on the Property and shall initiate construction of the Project, including dedicating significant resources and funds for the restoration and improvements to the Property. Developer shall provide the City with copies of all lease agreements between Developer and Tenant as soon as practicable after execution. All of Developer’s efforts to commence the project shall be conducted in a good and workmanlike manner and Developer and/or Tennant shall obtain all necessary building permits prior to any work being commenced.

Section 3.02. Commencement of Operation. Developer shall substantially complete the build out of the Property on or before June 30, 2025 and Developer and/or Tenant shall have obtained all necessary building permits and Certificates of Occupancy (or applicable equivalent) for the Property and commence operation of a restaurant on the Property on or before said date.

Section 3.03. Performance Period. The Performance Rebate Period during which Developer is eligible to receive Performance Rebate Payments shall extend from the Effective Date of this Agreement through the date when the Project becomes operational, however under no circumstances shall the Performance Rebate Period extend past June 30, 2025.

Section 3.04. Continued Operation of Business. After Project becomes operational as a restaurant or retail that generates sales tax, Developer shall continuously lease, operate, maintain, and manage Project or make diligent commercial efforts to lease, operate, maintain and manage Project on the Property for use as one or more restaurants or retail that generates sales tax until at least March 31, 2028.

ARTICLE IV

PERFORMANCE REBATE PAYMENTS FROM THE CITY

Section 4.01. Performance Rebate Payments. Subject to the requirements and limitations of this Article, the other terms and conditions of this Agreement, and Developer's compliance with its obligations under this Agreement, the City shall make Performance Rebate Payments to Developer in accordance with this Article during the Performance Rebate Period:

- a. The City shall make rebate payments to Developer in an amount not to exceed **\$500,000.00** in total to reimburse Developer for Qualified Hard Costs actually paid by Developer or Tenant which were expended for physical improvements which were actually made to the Property during the Performance Rebate Period. Notwithstanding any other provision in this Agreement, under no circumstance shall the City's total obligation to Developer or any other entity as a result of this Agreement exceed \$500,000.00.

Section 4.02. Process for Payment. Developer may request a Performance Rebate Payment for an applicable Qualified Hard Cost by written application submitted to the City. The City shall not be required to make a Performance Rebate Payment for any applicable Qualified Hard Cost until:

- a. the Developer submits to the City a payment request form in substantially the form attached as Exhibit C (the "Economic Development Incentive Payment Request") and a certificate of compliance in substantially the form attached as Exhibit D (the "Compliance Certificate") together with all information required under the Compliance Certificate necessary to verify Developer's material compliance with its obligations under this Agreement for City's rebate of the Qualifying Hard Cost; and
- b. the City has actually received a copy of all qualified lease agreements between Developer and Tenant covering the Performance Period. In order for a lease agreement to be considered qualified by the City, the lease agreement must contain contractual provisions between the Developer and Tenant which obligates Developer to credit and/or reimburse Tennant an amount not less than \$200,000 of any Performance Rebate Payment received by Developer from the City for Qualified Hard Costs paid and incurred by Tenant;
- c. funds are appropriated by the Garland City Council for the specific purpose of making a Performance Rebate Payment under this Agreement as part of the City's ordinary budget and appropriations approval process or through any subsequent appropriation.

Provided that the foregoing conditions have been satisfied and Developer is otherwise in compliance with this Agreement, the City shall pay Developer any Performance Rebate Payments due within thirty (30) days after the last to occur of the events in above subsections (a) through (c) of this Section 4.02.

ARTICLE V

TERMINATION AND DEFAULT

Section 5.01. Events of Termination. This Agreement terminates upon any one or more of the following:

- a. by expiration of the Term; or
- b. if a party materially defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, rebates, damages and/or expenses shall survive the termination of the Agreement.

Section 5.02. Effect of Termination/ Survival of Obligations. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or defaults(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

ARTICLE VI

ADDITIONAL AGREEMENTS AND OBLIGATIONS

Section 6.01. Indemnification. TO THE FULLEST EXTENT ALLOWED BY TEXAS LAW, DEVELOPER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF GARLAND, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES OF ANY CONCEIVABLE CHARACTER, DUE TO OR ARISING FROM DEVELOPER'S CONTRACTUAL OBLIGATIONS TO THIRD PARTIES, INJURIES TO PERSONS (INCLUDING DEATH), OR INJURIES TO PROPERTY (BOTH REAL AND PERSONAL) RESULTING FROM DEVELOPER'S PERFORMANCE OF THIS AGREEMENT.

ARTICLE VII

PERSONAL LIABILITY OF PUBLIC OFFICIALS AND LIMITATIONS ON CITY OBLIGATIONS

Section 7.01. Personal Liability of Public Officials. No employee or elected official of the City shall be personally responsible for any liability arising under this Agreement.

Section 7.02. Limitations on City Obligations. The Performance Rebate Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each year during the Term by the City as provided in this Agreement. Under no circumstance shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Performance Rebate Payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such payments are due. If the City fails to appropriate funds to make any Performance Rebate Payment(s), it shall immediately notify Developer of such non-appropriation and Developer may, at its sole option, terminate this Agreement, effective upon written notice to the City.

Section 7.03. No Recourse. Except for the right to terminate as provided in above Section 6.02, Developer shall have no recourse against the City for the City's failure to budget and appropriate funds during any fiscal year to meet the purposes and satisfy its obligations under this Agreement.

Section 7.04. Source of Funds. Performance Rebate Payments shall be made from annual appropriations only from such funds of the City as may be legally appropriated for the implementation of Article III, Section 52-a of the Texas Constitution, Chapter 380 of the Texas Local Government Code or any other economic development or financing programs authorized by Texas law or the home-rule powers of the City. Any Performance Rebate Payment to be made by the City to the Developer shall be limited as described in this Section and shall in no event exceed the amounts actually paid by Developer or Tenant for Qualified Hard Costs on the Project.

ARTICLE VIII

INFORMATION REGARDING PERFORMANCE

Section 8.01. Information. Subject to this Article VII, Developer shall, at such times and in such form as the City may reasonably request from Developer, provide information concerning the performance of Developer's obligations under this Agreement.

Section 8.02. Review of Developer's Records. To the extent that the City has questions about the information supplied by Developer in any report, application, filing, or other document provided under this Agreement, the Parties will engage in good faith efforts to resolve such questions and, upon the City's reasonable request, Developer will furnish or make available for inspection documentation reasonably sufficient to verify the accuracy and completeness of the

report, application, filing, certification or other information, and to demonstrate the manner in which such items or their contents were calculated or prepared. If, notwithstanding the good faith efforts of the Parties to resolve any questions concerning such items, the Parties are unable to resolve such issues, during the Term and for six (6) months thereafter, the City may examine and audit such books and records of Developer as are reasonably sufficient to verify the accuracy of such items. In the event the City's examination reveals a payment deficiency or discrepancy, the Parties will cooperate in good faith to address and resolve such deficiency or discrepancy. Information, documents, and materials provided by Developer shall be treated as described in below Section 8.04 of this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, Developer shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that is not necessary to verify Developer's compliance with this Agreement and that (x) constitutes trade secrets or proprietary information, (y) in respect of which disclosure is prohibited by law or any binding agreement or (z) is subject to attorney-client, attorney work product or other privilege recognized under Texas law. Notwithstanding anything to the contrary herein, the City will not have the right to review, inspect or audit any of Developer's records for periods that are more than four years from the date of the review, inspection or audit.

Section 8.03. Public Records; Confidentiality. Developer acknowledges and agrees that this Agreement, Developer's Compliance Certificates, and certain other documents and filing related to this Agreement are or will be public records subject to disclosure (after redaction of information exempt from disclosure as described below) under the Texas Public Information Act. The Parties acknowledge and agree that the Public Information Act exempts from disclosure certain types of records, materials and information, including without limitation: records confidential by law, either constitutional, statutory or by judicial decision (Section 552.101 of the Texas Government Code); social security numbers (Section 552.117(a)(2) of the Texas Government Code); trade secrets and economic development project information (Sections 552.110 and 552.131 of the Texas Government Code); and proprietary commercial information (Section 552.110 of the Texas Government Code). The City will endeavor to use adequate safeguards, no less than those safeguards observed by the City for its own confidential information, to maintain the security and confidentiality of all materials, communications, data and information related to this Agreement or supplied by Developer in connection with this Agreement that may be subject to such exemptions from disclosure. Developer acknowledges that this Agreement constitutes public information and the materials, communications, data and information related to this Agreement may also constitute public information subject to disclosure under the Public Information Act and agrees that the City may disclose this Agreement, the Compliance Certificates and the portions of materials, communications, data and information related to this Agreement as required by law. The City will make reasonable efforts to (a) give Developer prior written notice of a request for public information (other than a request for copies of this Agreement or Compliance Certificates, which Developer agrees may be released without notice to Developer) in a reasonably practicable time period to allow Developer to seek a protective order or other appropriate remedy, (b) disclose only such information as is required under the applicable law, (c) cooperate with Developer in responding to any such records request (but there shall be no obligation for the City to independently request or join in any request for a ruling from the Attorney General, to engage or participate in litigation or to otherwise pursue any remedies sought by Developer with regard to asserted proprietary commercial or financial information or trade

secrets). The City, without waiving its right to appeal an opinion or ruling under applicable procedures, will or may comply with any opinion or ruling of the Texas Attorney General or court order recommending or requiring redaction or withholding of information in response to a request for public information without further protest or appeal.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Rules of Construction. The capitalized terms listed in this Agreement shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement shall have meanings as commonly used in the English language. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- a. The masculine shall include the feminine and neuter.
- b. References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this Agreement.
- c. The Exhibits attached hereto are incorporated in and are intended to be part of this Agreement; provided that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.
- d. This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.
- e. Unless expressly provided otherwise in this Agreement, (i) where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.
- f. Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."
- g. The recitals to this Agreement are incorporated herein.

Section 9.02. Force Majeure. Unless otherwise provided, all obligations of Developer and City shall be subject to events of “force majeure” which shall mean any contingency or cause beyond the reasonable control of a party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials and labor. Notwithstanding any other provision to the contrary, calculations for Performance Rebate Payments owed by the City are not subject to, and expressly excluded from, events of “force majeure.” Performance Rebate Payment amounts owed by the City shall be strictly calculated in accordance with the terms and conditions of Article IV, without regard to any event, contingency, or cause beyond the reasonable control of either Party.

Section 9.03. Dispute Resolution and Step Negotiations. (a) The Parties shall attempt in good faith to resolve all disputes arising out of or relating to this Agreement or any of the transactions contemplated hereby promptly by negotiation, as follows. Either Party may give the other Party written notice of any such dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the Project personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty days from the referral of the dispute to such executives, or if no meeting of such executives has taken place within fifteen days after such referral, either Party may initiate mediation as provided hereinafter. If a Party intends to be accompanied at a meeting by an attorney, the other Party shall be given at least three business days’ notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the federal and state rules of evidence. Each Party will bear its own costs for this dispute resolution phase.

(b) In the event that any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby is not resolved in accordance with the procedures set forth in this Section 8.03, such dispute shall be submitted to non-binding mediation to a person mutually agreed by the Parties. The mediation may take place at a mutually agreed upon location. If the mediation process has not resolved the dispute within thirty days of the submission of the matter to mediation or within such longer period as the Parties may agree to, either Party may exercise all remedies available at law or in equity under this Agreement, including the initiation of court proceedings. Each Party will bear its own costs, and share equally in the costs of mediators, for this dispute resolution phase. If the mediation process has not resolved the dispute within thirty (30) days of the submission of the matter to mediation or within such longer period as the Parties may agree to, either Party may exercise all remedies available at law or in equity under this Agreement, including the initiation of Court Proceedings, subject to the limitations of this Agreement.

(c) Nothing in this Section shall preclude, or be construed to preclude, the resort by either Party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction or other relief to preserve the status quo or avoid irreparable harm. The Parties shall continue to perform each of their respective obligations under this Agreement during the pendency of any dispute; provided that this obligation shall not apply after the termination of this Agreement (except with respect to payments of amounts due and owing under this Agreement).

Section 9.04. No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement. Developer, in performing its obligations thereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties including Tennant, and Developer agrees to indemnify and hold City harmless therefrom. City, in performing its obligations hereunder, is acting independently, and the City assumes no responsibilities in connection therewith to third parties, specifically including any obligations to Tennant.

Section 9.05. Jurisdiction and Venue. City and Developer, to the fullest extent permitted by applicable law, irrevocably (i) submit to the exclusive jurisdiction of the district courts located in Dallas County, Texas and any appellate court thereof; (ii) waive any objection which either may have to the laying of venue of any proceedings brought in any such court and (iii) waive any claim that such proceedings have been brought in an inconvenient forum. Nothing in this provision shall prohibit a party from bringing an action to enforce a money judgment in any other jurisdiction where the courts of such jurisdiction have jurisdiction over the other party.

Section 9.06. Accommodation of Financing Parties. To facilitate Developer's obtaining of financing to construct and operate the Project, City shall make reasonable efforts to provide such consents to assignments, certifications, representations, information or other documents as may be reasonably requested by Developer or the Developer's financing parties in connection with the financing of the Project; provided that in responding to any such request, the City shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that materially adversely affects or unduly burdens the City. Developer shall reimburse, or shall cause the financing parties to reimburse, the City for the incremental, direct, and documented third party expenses (including, without limitation, the reasonable fees and expenses of outside counsel) incurred by the City in the preparation, negotiation, execution or delivery of any documents requested by Developer or the financing parties, and provided by the City.

Section 9.07. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Section 9.08. Binding Effect; Successors and Assigns. The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto. This Agreement, or the right to receive grant payments, pursuant to this Agreement, may not be assigned, in whole or in part, without the express written consent of the City; not to be unreasonably withheld, conditioned or delayed; provided that Developer may, without the City's consent, assign this Agreement to a wholly-owned subsidiary or affiliate of Developer. However, without the City's consent, Developer may enter into a collateral assignment of this Agreement in connection with any financing of the Project. For purposes of this Agreement, performance by a successor or an affiliate of Developer, or performance by a party with whom Developer or its affiliates contract shall be deemed to be performance by Developer.

Section 9.09. Amendments. No modifications or amendments to this Agreement shall be valid unless in writing and signed by a duly authorized signatory.

Section 9.10. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

Section 9.11. Notices. All notices required to be given under this Agreement shall be in writing and shall be given by either party or its counsel in person, via an express mail service or via courier or via receipted facsimile transmission (but only if duplicate notice is also given via express mail service or via courier or via certified mail) or certified mail, return receipt requested, to the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby). All notices given pursuant to this paragraph shall be deemed effective, as applicable, on the date such notice may be given in person, next business day following the date on which such communication is transferred via facsimile transmission, or as applicable, deposited with the express mail service, courier, or in the United States mails. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

If to City:

City of Garland
Mr. Judson Rex
City Manager
Post Office Box 469002
Garland, Texas 75046
Phone: (972) 205-3800
Fax: (972) 205-2474
jrex@garlandtx.gov

With a required copy to:
Mr. Brian England
City Attorney
200 North Fifth Street
Fourth Floor
Garland, Texas 75046
Phone: (972) 205-2380
Fax: (972) 205-2389
bengland@garlandtx.gov

If to Developer:

_____@_____

With a required copy to:

Section 9.12. Employment of Undocumented Workers. During the term of this Agreement the Developer agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Developer shall repay the amount of the Performance Rebate Payments and any other funds received by the Developer from the City as of the date of such violation within 120 business days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent compounded annually from the date of violation until paid.

Section 9.13. Non-Collusion. Developer represents and warrants that neither Developer nor anyone on Developer'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.

Section 9.14. Time of the Essence. Time is of the essence in the performance of this Agreement. If any deadline contained herein ends on a Saturday, Sunday or a legal holiday recognized by the Texas Supreme Court, such deadline shall automatically be extended to the next day that is not a Saturday, Sunday or legal holiday.

Section 9.15. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall have the force and effect of any original, as of the Effective Date.

Section 9.16. Default and Claw-Back. (a) The City shall notify the Developer, in writing, of a default by the Developer in complying with the terms and provisions of this Agreement. In the event that the Developer has failed to cure the default(s) within thirty (30) days of receipt of the notice of default (or has failed to commence and diligently pursue such cure within such thirty (30) day period if cure cannot be completed within such thirty (30) day period), the Developer shall promptly reimburse the City for any Performance Rebate Payment received by Developer under this Agreement. Failure on the part of the City to exercise any right contained in this Agreement shall not constitute waiver of any right in the event of any subsequent default, and no waiver shall be effective unless in writing, executed by both the City and the Developer.

(b) In the event that the Developer and/or Tenant does not commence operation as a restaurant or retail that generates sales tax on the Property by January 1, 2024, Developer shall promptly reimburse the City for any Performance Rebate Payment received by Developer under this Agreement.

(c) In the event the Project does not remain operational or Developer fails to make diligent commercial efforts to ensure that the Project remains operational through January 1, 2028, Developer shall promptly reimburse the City for any Performance Rebate Payment received by Developer under this Agreement.

Section 9.17. Term. The Term of this Agreement commences on the Effective Date and continues until June 30, 2028, unless sooner terminated by either Party in accordance with the terms of this Agreement, provided that any obligation of Developer to reimburse or repay the City for any obligation to the City otherwise arising under this Agreement shall survive the termination of this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

Executed and effective as of the ____ day of _____, 2023.

DEVELOPER

Shirlee Mae, LLC, a Texas limited liability corporation

By: _____

Name: _____

Title: _____

DEVELOPER

Andor Properties, LLC, a Texas limited liability corporation

By: _____

Name: _____

Title: _____

CITY

City of Garland, Texas
a home-rule municipality

By: _____

Judson Rex,
City Manager

Exhibit A
Property Legal Description

Address: 500 Main Street

Legal Description: Downtown Garland Square, EMBREE Block 9 Lot 1 Acres .1820



Exhibit B
Rebate Tracking Sheet Table

| Rebate Tracking Sheet | Total Construction Cost | Matt's Hard Costs | Allowable Hard Costs | Allowable Rebate \$500,000 \$200,000 tenant & \$300,000 landlord |
|---|--------------------------------|--------------------------|-----------------------------|--|
| Plans (Exterior of Bldg.) | 34,202.00 | | | |
| Plans (Restaurant Space) | 63,000.00 | | | |
| Plans (Wine Shop) | 15,000.00 | | | |
| Permit (Exterior Remodel) | 5,444.00 | | | |
| Permit (Restaurant Remodel) | 5,000.00 | | | |
| Permit (Wine Shop) | 2,000.00 | | | |
| Tap Fees for (1) Sewer, (1) Water, (\$20,000.00 Allowance) | 5,444.00 | | | |
| Asbestos Survey | 4,650.00 | | | |
| Asbestos Abatement | 28,020.00 | | \$28,020 | |
| Engineering Costs | 4,500.00 | | | |
| On Site Supervision | 40,000.00 | | | |
| Dump Fees | 3,500.00 | | | |
| Construction Clean Up | 1,800.00 | | | |
| Rentals (Barricades, Lifts, Etc.) | 2,200.00 | | | |
| Dust Protection | 1,000.00 | | | |
| Final Clean | 2,600.00 | | | |
| Insurance | 3,500.00 | | | |
| Temp Utilities | 5,000.00 | | | |
| | 226,860.00 | | | |
| Exterior Stucco Removal East Wall | 2,000.00 | | \$2,000 | |
| Brick Removal at (3) O/H Door Locations | 5,400.00 | | \$5,400 | |
| Misc. Brick removal at Interior | 1,000.00 | | \$1,000 | |
| Clean Brick East Ext. Wall | 1,000.00 | | \$1,000 | |
| Remove (1) Over Head Door | 400.00 | | \$400 | |
| Remove (1) Service Door | 200.00 | | \$200 | |
| Saw Cut and Remove Concrete for Grease Trap | 3,140.00 | | \$3,140 | |
| Saw Cut and Remove Concrete at Alley for Utility Work | 3,000.00 | | \$3,000 | |
| Saw Cut and Remove Concrete at Interior LL space | 2,100.00 | | \$2,100 | |
| Saw Cut and Remove Concrete at for RR Plumbing | 3,000.00 | | \$3,000 | |
| Saw Cut and Remove Concrete (Sagging) | 3,000.00 | | \$3,000 | |
| Concrete Removal at Below Slab (\$3000.00 Allowance) | 3,000.00 | | \$3,000 | |
| Gate and Frames at Dumpster | 2,000.00 | | \$2,000 | |

| | | | | |
|---|-------------------|-------------|----------|--|
| Landscape (Decomposed Granite) Planters | 30,000.00 | | | |
| Utility Work | 43,325.00 | | \$43,325 | |
| Tree Surgeons | 1,922.00 | | \$1,922 | |
| Irrigation Work at Alley | 3,340.00 | | \$3,340 | |
| | 107,827.00 | | | |
| Dumpster Pad | 9,000.00 | | \$9,000 | |
| East Side Walk and Grease Trap | 10,000.00 | | \$10,000 | |
| Repairs at Alley | 6,000.00 | | \$6,000 | |
| Interior Concrete at MEP Areas | 8,000.00 | | \$8,000 | |
| Interior Concrete at Damaged Sagging Areas | 12,000.00 | | \$12,000 | |
| Column Bases | 1,000.00 | | \$1,000 | |
| | 46,000.00 | | | |
| Saw Cut and Remove Concrete for Plumbing | | | | |
| Brick Removal at (1) Exterior Door | | \$4,800.00 | | |
| Pour Back Plumbing Trenches | | \$6,800.00 | | |
| Brick Work at Dumpster Enclosure | 9,500.00 | | \$9,500 | |
| Patch Brick Work at (3) O/H Doors | N/A | | | |
| Brick work at Removal of Service Door | 2,000.00 | | \$2,000 | |
| Brick Work at Existing Interior Brick Wall | 15,000.00 | | \$15,000 | |
| Brick Work at (2) New Service Door Openings | 1,000.00 | | \$1,000 | |
| Stucco Repairs at Soffit | 4,400.00 | | \$4,400 | |
| | 31,900.00 | | | |
| Brick work at Interior Kitchen Wall | | \$91,900.00 | | |
| Pipe Bollards at Dumpster Pad | 1,500.00 | | \$1,500 | |
| Dumpster Gate Supports and Gate Frames | 4,000.00 | | \$4,000 | |
| Interior Columns | 3,000.00 | | \$3,000 | |
| Steel Supports at (3) Overhead Door Locations and (2) Service Doors | 3,000.00 | | \$3,000 | |
| Metal Fencing around Patio | 17,000.00 | | \$17,000 | |
| Roof Ladder (Interior) | 1,400.00 | | \$1,400 | |
| | 29,900.00 | | | |
| Install Wood slats at Dumpster Gates | 1,000.00 | | \$1,000 | |
| Install Wood Support Framing at Existing Roof locations | 6,400.00 | | \$6,400 | |
| Additional Supports for TRU's | 3,000.00 | | \$3,000 | |
| Additional Supports for Kitchen Equip | 2,000.00 | | \$2,000 | |
| Cabinetry and Shelves at Restaurant | 10,000.00 | | \$10,000 | |
| Cabinetry and Shelves at Wine Shop | 2,000.00 | | \$2,000 | |
| Paneling and Trim at Restaurant | 25,000.00 | | \$25,000 | |
| Wood Base at Restaurant | 5,000.00 | | \$5,000 | |

Cont.

| | | | | |
|--|-------------------|--------------------|----------|--|
| Wood Base at Wine Shop | 2,000.00 | | \$2,000 | |
| Wood Bar Top at Restaurant | 10,000.00 | | \$10,000 | |
| Wood Supports at Overhead Doors | 1,000.00 | | \$1,000 | |
| | 67,400.00 | | | |
| Remove and Replace Roofing | 95,000.00 | | \$95,000 | |
| Insulation at Demising Walls | 2,500.00 | | \$2,500 | |
| Insulation at Kitchen and Restroom Walls | 2,000.00 | | \$2,000 | |
| Caulking and Sealants | 1,000.00 | | \$1,000 | |
| | 100,500.00 | | | |
| Install Vinyl Face R19 Insulation at Roof Deck | | | | |
| Patch Rood at MEP Penetrations | | | | |
| Install Insulation at Restroom Walls and Ceiling | | | | |
| Caulking and Sealants | | | | |
| | | \$16,000.00 | | |
| Install (3) Glass OH Doors | 25,000.00 | | \$25,000 | |
| Install (1) Metal Insulated OH Door | 2,500.00 | | \$2,500 | |
| Install (1) Exterior Metal Door and Frame | 2,000.00 | | \$2,000 | |
| Install (1) Glass Service Door | 3,000.00 | | \$3,000 | |
| Install Glass Door and Side Lite at Wine Sh. | 5,000.00 | | \$5,000 | |
| install (2) Eliason Doors at Restaurant | 4,000.00 | | \$4,000 | |
| Install (3) Wood Doors in H/M Frames at R. | 2,700.00 | | \$2,700 | |
| Install (2) Doors with H/M Frames Wine Sh. | 1,800.00 | | \$1,800 | |
| Mirrors at Restrooms | 1,200.00 | | \$1,200 | |
| | 47,200.00 | | | |
| Demising Wall | 10,000.00 | | \$10,000 | |
| Restroom Walls at Wine Shop | 2,000.00 | | \$2,000 | |
| Wall at Storage Room Wine Shop | 2,000.00 | | \$2,000 | |
| Walls and Ceilings at Restaurant | 45,000.00 | | \$45,000 | |
| FRP on Walls of Kitchen Bar at Restroom | 10,000.00 | | \$10,000 | |
| Tile at Restrooms Wind Shop | 2,500.00 | | \$2,500 | |
| Tile at Restrooms Restaurant | 15,000.00 | | \$15,000 | |
| Epoxy Floor at Kitchen and Bar Restaurant | 10,000.00 | | \$10,000 | |
| Sealed Concrete Floors Wine Shop | 6,000.00 | | \$6,000 | |
| Sealed Concrete Floors Restaurant | 10,000.00 | | \$10,000 | |
| Tape and Bed Work Wine Shop | 2,000.00 | | \$2,000 | |
| Tape and Bed Work Restaurant | 5,000.00 | | \$5,000 | |
| Interior Painting/Staining Restaurant | 20,000.00 | | \$20,000 | |
| Interior Painting Wine Shop | 3,000.00 | | \$3,000 | |
| Exterior Building Painting | 4,000.00 | | \$4,000 | |
| Painting Patio, Fencing and Gates | 3,000.00 | | \$3,000 | |
| | 149,500.00 | | | |
| Building Signage Wine Shop | 4,000.00 | | | |
| Building Signage Restaurant (2) Each | 15,000.00 | | | |
| Building Neon | 3,784.00 | | \$3,784 | |

Cont.

| | | | | |
|---|-------------------|--------------|-----------|--|
| Interior Signage | 1,000.00 | | | |
| Toilet Portions/Accessories Restaurant | 12,000.00 | | \$12,000 | |
| Fire Extinguisher Restaurant | 1,500.00 | | \$1,500 | |
| | 37,284.00 | | | |
| | | | | |
| Supply and Install Walking Cooler and Equipment | 35,000.00 | | \$35,000 | |
| Supply and Install Exhaust Hoods, Exhaust Fans, Make Up Air Unit and Related Duct | 55,000.00 | | \$55,000 | |
| Install 7.5 Ton RTU at Wine Shop | 18,000.00 | | \$18,000 | |
| Install (1) 10 Ton and (3) 7.5 Ton RTU's at Restaurant | 80,000.00 | | \$80,000 | |
| Install Duct Work at Wine Shop | 10,000.00 | | \$10,000 | |
| Install Duct Work at Restaurant | 30,000.00 | | \$30,000 | |
| Install Exhaust Fans Wine Shop Restrooms | 1,600.00 | | \$1,600 | |
| Install Exhaust Fans Restaurant Restrooms | 800.00 | | \$800 | |
| | 230,400.00 | | | |
| Install Duct Work and Grilles | | | | |
| Install Exhaust Fans at Restrooms | | | | |
| Install Owner Furnished Hoods, Make Up Air Unit, Exhaust Fans and Grease Ducts | | | | |
| | | \$51,500.00 | | |
| | | | | |
| Grease Trap and Sewer Install | 50,540.00 | | \$50,540 | |
| Plumbing Work at Restaurant | 106,000.00 | | \$106,000 | |
| Sinks and Faucets at Wine Shop | 6,000.00 | | \$6,000 | |
| | 162,540.00 | | | |
| Install Water, Sewer, Grease and Vent Pipe | | | | |
| Install Toilets and Sinks | | | | |
| Install RPZ Valves | | | | |
| Install Janitor Sink and Faucet | | | | |
| Hook Up Owner Furnished Bar Equipment | | | | |
| Install (2) Tank-less Water Heaters | | | | |
| | | \$106,000.00 | | |
| | | | | |
| Building Electric (Distribution Panel, Trans socket, Main Disconnect, Etc.) | 90,000.00 | | \$90,000 | |
| House Panel Disconnect and Lighting | 8,000.00 | | \$8,000 | |
| Panel for (Wine Shop) | 3,000.00 | | \$3,000 | |
| Panels for (Restaurant) | 18,000.00 | | \$18,000 | |
| Outlets, Switches and Lighting (Wine Shop) | 7,000.00 | | \$7,000 | |
| Outlets, Switches and Lighting (Restaurant) | 97,000.00 | | \$97,000 | |
| Fire Alarm | 12,000.00 | | \$12,000 | |
| | 235,000.00 | | | |
| Install (1) 600 Amp Panel | | | | |
| Install outlets and Switches | | | | |
| Install Lighting and Exit Devices | | | | |
| Hook Up Equipment | | | | |

Cont.

| | | | | |
|--|----------------|---------------------|-----------------------|-----------|
| | | \$115,000.00 | | |
| Fire Riser and Sprinklers | 85,000.00 | | \$85,000 | |
| Install Sprinkler Heads and Required | | | | |
| Install Fire Alarm System | | \$16,500.00 | | |
| | 85,000.00 | | | |
| | \$1,557,311.00 | | | |
| | 186,877.32 | | | |
| | \$1,744,188.32 | | | |
| | 143,895.54 | | | |
| | \$1,888,083.86 | | | |
| Jones Baker Design | 32,000.00 | | | |
| DTech Services (Asbestos Survey) | 4,650.00 | | | |
| Excellence Ecological (Asbestos Abatement) | 28,020.00 | | | |
| Monk Consulting Engineering | 4,500.00 | | | |
| TOTAL | \$1,957,253.86 | 408,500.00 | \$1,308,471 | 0 |
| | REBATE | \$200,000 Tenant | \$300,000 Landlord | \$500,000 |

Exhibit C
Incentive Payment Request Form



GARLAND
TEXAS MADE HERE

| Economic Development Incentive Payment Request |

Contact Information

Date: _____
Company Name: _____
Contact Person: _____ Job Title: _____
Address: _____
Phone: _____ Email: _____

Current payment requested \$ _____ **DOLLARS**
(Please include EXACT dollars and cents amount)
Payments made to date: \$ _____
Total remaining incentive amount: \$ _____
(Please attach paid invoices/receipts to this form)

Before me, the undersigned notary, on this day personally appeared _____ *[printed name of affiant]*, a person whose identity is known to me. After I administered an oath to him/her, upon said oath affiant stated:

1. My name is _____ *[printed name of affiant]*. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I have personal knowledge of the Agreement entered into between the City of Garland, Texas and _____ *[printed name of company]* (the "Company"). I read the Agreement and understand the Company's obligations and representations therein.
3. I am authorized by the Company to make this affidavit on behalf of the Company.
4. I am the _____ *[affiant's job position held with the Company]*. As such, I have personal knowledge of the Company's operations as it relates to the Agreement.

5. The Company has met all of its obligations, conditions, and terms of the Agreement as of the _____ day of _____, 20_____.

6. I understand that in order to receive payments from the City, the Company must register as an authorized City Vendor.

Signature of Affiant

Sworn to and subscribed before me by _____ [name of affiant] on the _____ day of _____, 20_____.

Notary Public in and for the State of Texas

Please submit the completed form by mail to:

**City of Garland
Department of Economic Development
PO Box 469002
Garland, TX 75046-9002**

For additional questions, contact the City of Garland at 972-205-3800.

Office Use Only

Notes:

Vendor Name: _____

Vendor Number: _____ Invoice Number: _____

Distribution Code / Funding Source: _____ Received (Please Initial): _____

☐ Research Specialist

☐ Business Development

☐ Department Coordinator

Director Approval: _____

City of Garland - Payment Request Revised 8/2018 Page 2 of 2

Exhibit D

Compliance Certificate



GARLAND
TEXAS MADE HERE

Annual Development Incentive Compliance and Certification Report

Reporting Period: January 1 to December 31, 20 23

Instructions:

Please complete Section 1 (page 1) along with Annual Certificate of Compliance (page 2), which is required to be completed and notarized by a binding contract officer.

In addition, please review and fill all other sections with applicable information covering the relevant reporting period. If the Economic Development Agreement requires any specific performance requirements and/or deliverables, they must be reported in this compliance form.

It is encouraged for the client to attach any additional documentation that can assist the City in verifying the claims in this reporting form.

Section 1: Project Information (Required)

Company / Project Name: _____

Project Contact: _____ Title: _____

Phone: _____ Fax: _____ Email: _____

Project Contact Address: _____

Company Address (if different): _____

Address of Property Subject to Incentive: _____

Have there been any changes in the contact information above? Yes ☐ No ☐

If yes, please fill out the Notification Change form and send the original hard copy to the below stated physical address for review and proper filing.

**City of Garland
Department of Economic Development
203 N 5th Suite 100,
Garland, TX 75040**



GARLAND

TEXAS MADE HERE

Annual Certificate of Compliance for Economic Development Incentive Agreement

Before me, the undersigned notary, on this day personally appeared _____ [printed name of affiant], a person whose identify is known to me. After I administered an oath to him/her, upon said oath affiant stated:

1. My name is _____ [printed name of affiant]. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I have personal knowledge of the Agreement entered into between the City of Garland, Texas and _____ [printed name of company] (the "Company"). I read the Agreement and understand the Company's obligations and representations therein.
3. I am authorized by the Company to make this affidavit on behalf of the Company.
4. I am the _____ [affiant's job position held with the Company]. As such, I have personal knowledge of the Company's operations as it relates to the Agreement.
5. The Company has met all of its obligations, conditions, and terms of the Agreement as of the _____ day of _____, 20_____.

Signature of Affiant

Sworn to and subscribed before me by _____ [name of affiant] on the _____ day of _____, 20_____.

Notary Public in and for the State of Texas

Please submit the completed form by mail to:

**City of Garland
Department of Economic Development
203 N 5th Suite 100,
Garland, TX 75040**

For additional questions, contact the City of Garland at 972-205-3800.

City of Garland - Annual Certificate of Compliance Revised 8/2018

Section 2: Tax Valuation

Does the agreement include specific performance requirements regarding real estate, personal property, or other tax impacting valuations?

Yes ☐ No ☐

If yes, what is the:

Real Estate value requirement?

_____ N/A ☐

Business Personal Property value requirement?

_____ N/A ☐

Other requirement?

_____ N/A ☐

Are you currently or do you intend to protest the specified appraised values?

Yes ☐ No ☐

Has anything changed since the last compliance report that may be relevant to this report?

Additional information on appraised property values can be found at the Dallas County Appraisal District's website: <http://www.dallascad.org/>

Section 3: Employment

Does the agreement include performance requirements regarding job creation, payroll, etc?

Yes ☐ No ☐

If yes, what is the:

Number of current employees at end of this reporting period?

Full time: _____ Part time: _____

Number of employees added in this reporting period?

Full time: _____ Part time: _____

What are the payroll requirements?

_____ N/A ☐

Did the project meet all employment requirements?

Yes ☐ No ☐ N/A ☐

To confirm employment performance, please attach to this report a copy of the Employer's Quarterly Report (Form C-3) provided by the Texas Workforce Commission.

Section 4: Building

Does the agreement include performance requirements regarding building size or construction performance dates?

Yes ☐ No ☐

If yes, what is the:

Building Area (square feet)?

Building Permit issue date?

Certificate of Completion issue date?

Certificate of Occupancy date?

Are there any other building/construction requirements?
If yes, please describe below.

Section 5: Utilities

Does the agreement require the use of utilities provided by the City of Garland? *(Electricity, water, wastewater, and/or solid waste)*

Yes ☐ No ☐

If yes, does the project use City of Garland services for:

Electricity?

Yes ☐ No ☐

Water?

Yes ☐ No ☐

Wastewater?

Yes ☐ No ☐

Solid waste?

Yes ☐ No ☐

Section 6: Additional Requirements

Please answer the following questions regarding additional requirements in the agreement.

Most Favored Customer – *If the City desired to be a customer of any products/services of the Project, did the company offer terms/pricing offered to the most favored customer?*

Yes ☐ No ☐ N/A ☐

Garland Recognition – *In communications/branding/marketing/promotions regarding the Project, did the company use commercially reasonable efforts to recognize that the Project and associated business operations are in Garland?*

Yes ☐ No ☐ N/A ☐

Local Purchases – *Did the company make commercially reasonable efforts to purchase within Garland all supplies, materials, and equipment related to the project?*

Yes ☐ No ☐ N/A ☐

Please describe any other requirements not reported above.

*For the convenience of speeding up submittal, you may email a copy of the completed report to **ED@GarlandTX.gov**.*

Please note that you must submit an original hard copy of the report to the below stated physical address for review and proper filing. No photocopies or scanned copies of the Certificate of Compliance (page 2) will be accepted as a record of contract compliance.

The City may agree amend this form, provided such amended form shall be substantially similar in reporting the information necessary to confirm compliance with the agreement.

Upon request of the City, the developer or tenant shall permit the City to conduct an audit or inspection of the developer or tenant's records in accordance with the terms of the agreement.

Please submit the completed form by mail to:

**ATTN: Annual Development Incentive Compliance and
Certification Report
City of Garland
Department of Economic Development
203 N 5th Suite 100,
Garland, TX 75040**