

ECONOMIC DEVELOPMENT AGREEMENT

STATE OF TEXAS

COUNTY OF GUADALUPE

THIS AGREEMENT (“Agreement”) by and between the CITY OF SCHERTZ, TEXAS, a Texas municipal corporation (the "City"), the Schertz Economic Development Corporation, a Texas Non-profit Type B Development Corporation (hereinafter referred to as “SEDC”) and 3009 OAC Investments, LLC, a Texas limited liability company, its successors or assigns ("Developer"), (City, SEDC and Developer collectively referred to as the "Parties" and sometimes individually as a "Party"), is entered into upon the "Effective Date," as more clearly defined herein.

WHEREAS, by Ordinance No. 12-T-15, the City established a City of Schertz Economic Development Incentives Policy under Chapter 380, Texas Local Government Code, as amended (“Chapter 380”), and under the Development Corporation Act, Texas Local Government Code Chapters 501 and 505, as amended (the “Development Corporation Act”), to promote economic development and to stimulate business and commercial activity in the City; and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution, and Section 380.001 of the Texas Local Government Code ("Section 380"), the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City; provided the program created or loan or grant made is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City; and

WHEREAS, City and the SEDC are willing to participate in enhancing, expanding, and retaining businesses within the City that are qualified economic development prospects; and

WHEREAS, Developer owns approximately 1.3 acres of real property in the City, generally described as Lot 1, Block 1 of the Blackburn Subdivision, as depicted in the attached **Exhibit “A”** (the “Property”); and

WHEREAS, Developer intends to develop the Property primarily as a commercial/retail project consisting initially of an approximately 9,900 square foot office building (the “Project,” as more fully shown in the Project Site Plan attached as **Exhibit “B”** that will require significant investment, including the construction of public improvements and infrastructure; and

WHEREAS, the Property currently has an assessed value of \$497,173.00, currently generates less than \$2,550 in annual ad valorem property taxes for the City, and currently generates no sales tax for the City; and

WHEREAS, the Developer expects a total investment of approximately \$3 million for the development of the Project; and

WHEREAS, upon completion of the Project, the Property may potentially have an appraised value of over \$2,000,000; and

WHEREAS, Developer shall create and maintain a minimum one (1) full-time job and 40-60 independent contractors equivalent jobs during the entire term of this Agreement; and,

WHEREAS, the Project includes significant public infrastructure improvements, such as the construction of public roads and other traffic improvements, the construction of water, sewer and other utility infrastructure, and the construction of drainage improvements; and

WHEREAS, Section 501.103 authorizes expenditures for certain infrastructure improvement projects that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises; and

WHEREAS, Section 501.158 of the Act requires an incentive agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, Section 501.073 of the Act requires the SEDC's authorizing unit to approve all programs and expenditures.

WHEREAS, the Parties agree that the provisions of this Agreement substantially advance a legitimate interest of the City and SEDC by providing public infrastructure, expanding the tax base of the City, increasing employment, and promoting economic development.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I RECITALS

1. Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. Authority. The City's execution of this Agreement is authorized by the Texas Constitution, Chapter 380 of the Texas Local Government Code, the City Charter and through the appropriate approval by its governing body, and constitutes a valid and binding obligation of

the City. The SEDC's execution of this Agreement is authorized by Chapters 501 and 505 of the Texas Local Government Code and through the appropriate approval by its governing body and constitutes a valid and binding obligation of the SEDC. The Parties acknowledge that the Developer is acting in reliance upon the City's and SEDC's performance of their respective obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Project.

2. Term. This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date (the "Term"), unless terminated sooner in accordance with Article VII. The "Expiration Date" shall mean the earlier of:

A. The City's fulfillment of all obligations and conditions herein and the reimbursement pursuant to the City Tax Reimbursement Grant and Public Infrastructure Grant of the Maximum Grant Amount to Developer; or

B. Ten (10) years from the last day of the First Full Grant Period.

3. Purpose. The purpose of this Agreement is to formalize the agreements between the City, SEDC and Developer for the granting of public funds in the form of Infrastructure Reimbursement Grants to assist with costs associated with Developer's Project and specifically state the covenants, representations of the Parties associated with Developer's commitment to abide by the terms of this Agreement which has been approved by the Parties as complying with the specific requirements of the state law. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by the Developer may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the City and SEDC unless an alternative penalty or remedy is provided for herein.

4. Administration of Agreement. Upon the Effective Date, the City and SEDC delegate the administration and oversight of this Agreement to the Executive Director of the SEDC. All current or future administration and reporting to the State of Texas associated with Chapter 380 of the Texas Local Government Code is delegated to the City of Schertz. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the SEDC and the City Council of the City of Schertz, Texas.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

"City Infrastructure Grant" shall mean the City's payment to a Developer reimbursing that Developer for 50% of ad valorem taxes paid to the City of Schertz on real property and personal property and attributed to the Project above the Base Year value.

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

“Base Year Value” shall mean the value of the Property as of January 1, 2022.

“Certificate of Occupancy” shall mean the signed certificate issued by the City of Schertz Inspections Division granting the Developer the right to occupy the Facility and confirming that the entire work covered by the permit and plans are in place.

“Default” shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant if uncured within sixty (60) days of receiving written notice from any other Party.

“Developer” shall mean 3009 OAC Investments, LLC, a Texas limited liability Developer, and/or its successors and assigns.

“Effective Date” shall mean the date in which the Agreement is effective, which is the date the Agreement is executed by all parties.

“First Full Grant Period” shall mean the period beginning on January 1 and ending on December 31 for the year following the year in which the Project receives a certificate of occupancy and begins operation.

“Force Majeure: shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government, or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions, floods, strikes, slowdowns, or work stoppages. It shall not include reasonably foreseeable interruptions in the material supply chain.

“Full-Time Equivalent Employee” means an employee with a regular work schedule of at least 32 hours per week.

“Grant(s)” shall collectively mean the City Infrastructure Grant and/or SEDC Infrastructure Grant to be paid to Developer as set forth herein; subject, however, at all times to the Maximum Grant Amount (as defined below).

“Grant Period” shall mean each successive one (1) calendar year period, starting with the First Grant Period.

“Maximum Grant Amount” shall mean up to \$25,000.00 in City Infrastructure Grant and up to \$25,000.00 in SEDC Infrastructure Grant for a total of no more than \$50,000.

“Payment Request” shall mean a written request from Developer(s) to the Schertz Economic Development Corporation for payment of the applicable Grant for the applicable Grant Period.

“Project” shall mean the development of the Property and associated Public Infrastructure within or adjacent to the Property. The Project shall consist of a commercial/retail development consisting of approximately 9,900 square feet of office space and public and private infrastructure. The Project shall comply generally in shape and form with the Project Site Plan, attached hereto as **Exhibit “B.”**

“Property” shall mean the real property described in **Exhibit “A,”** upon which the Project, authorized by this Agreement, shall be constructed.

“Public Infrastructure” shall mean the improvements constructed by the Developer including, but not limited to, public roads, traffic improvements, utility infrastructure, drainage facilities, and other infrastructure as may be illustrated in the Project Site Plan, attached hereto as **Exhibit “B”**.

“State of Texas” shall mean the Office of the Texas Comptroller or its successor.

ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVES AND CONDITIONS

The Public Infrastructure shall be constructed by Developer, at no expense to the City, and shall comply with the requirements of this Agreement and applicable ordinances rules and regulations, of the City. The Public Infrastructure, combined with the bringing of office development to Schertz, Texas, the increased tax revenue, and other benefits potentially created by the Project, are intended to provide a catalyst to the economy of the City in numerous ways. In exchange for construction of the Public Improvements and benefit conferred upon the City, City agrees to provide Developer with the economic development incentives, which under no circumstance shall exceed the Maximum Grant Amount, as outlined below.

- 1. City Infrastructure Grant.** City shall provide a public infrastructure reimbursement grant in an amount up to \$25,000.00 for verified Developer public infrastructure expenditures within the Project. City Infrastructure Grant shall be paid on an annual basis in a maximum yearly amount of Fifty Percent (50%) of the annual ad valorem taxes paid to the City.
- 2. SEDC Infrastructure Grant.** SEDC shall provide a public infrastructure reimbursement grant in an amount up to \$25,000.00 for verified Developer public infrastructure expenditures within the Project. Said Infrastructure Grant shall be paid within sixty (60) days after receipt of a copy of the Certificate of Occupancy.

3. The obligation of the City and SEDC to pay any Grants shall be conditioned upon Developer’s continued compliance with and satisfaction of, in all material respects, each of the applicable conditions set forth in this Agreement and Table A.

Table A

Year Ending December	Jobs Required	Minimum Property Value Required	Potential Infrastructure Grant Payment as defined in Article IV	Annual Report Due
0 -2022				
1 - 2023			SEDC Infrastructure Grant	February 15, 2024
2- 2024	1	\$2,000,000	City Infrastructure Grant	February 15, 2025
3 - 2025	1	\$2,000,000	City Infrastructure Grant	February 15, 2026
4 - 2026	1	\$2,000,000	City Infrastructure Grant	February 15, 2027
5 – 2027	1	\$2,000,000	City Infrastructure Grant	February 15, 2028
6 – 2028	1	\$2,000,000	City Infrastructure Grant	February 15, 2029
7 - 2029	1	\$2,000,000	City Infrastructure Grant	February 15, 2030
8 - 2030	1	\$2,000,000	City Infrastructure Grant	February 15, 2031
9 – 2031	1	\$2,000,000	City Infrastructure Grant	February 15, 2032
City Infrastructure Grants are continued until the Maximum Grant Amount is reached or (10) years from the last day of the First Full Grant Period as described in Article II.				

4. Required Reporting

Annual Report. The Company shall submit an Annual Certification Report (an “Annual Report”) for the preceding Calendar Year to the Executive Director of the Corporation each year not later than February 15th. The Annual Report should substantially conform to the Form of Annual Certification Report attached as Exhibit A to this Agreement. The first Annual Report will be due February 15th, 2024.

5. Additional Reports, Information and Privacy.

(a) Upon written request by City, Developer shall within a reasonable time provide additional information reasonably necessary to determine if Developer is

in compliance with this Agreement. All information required by this Agreement shall be submitted to the City Manager at the address specified for giving notice in this Agreement.

(b) All information provided by Developer to City under the required reporting section shall be deemed confidential and shall not be provided to any person outside City government and shall not be subject to public inspection in accordance with the Texas Public Information Act, pursuant to section 552.110 of the Texas Government Code. In the event a request is made for such information, City will not disclose the information unless required to do so by the Attorney General of Texas.

(c) The payment of all indebtedness and obligations incurred by Developer in connection with the development and construction of the Facility and the operation of the Facility shall be solely the obligations of Developer. City shall not be obligated to pay any indebtedness or obligations of Developer.

(d) Developer is obligated to make timely payment of Developer-owned Real Property and Personal Property Taxes during the Term of this Agreement.

ARTICLE V COVENANTS AND DUTIES

1. Developer's Covenants and Duties. Developer makes the following covenants and warranties to the City and agrees to timely and fully perform such obligations and duties of this Agreement. Any false or substantially misleading statements by Developer contained herein or failure by Developer to timely and fully perform those obligations and duties of Developer within this Agreement shall be an act of Default by the Developer after notice and opportunity to cure as provided in this Agreement. Developer is responsible for complying with the conditions provided herein.

(a) Developer 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.

(b) The execution of this Agreement has been duly authorized by Developer's authorized agent, and the individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in material contravention of any law, rule, regulation, or of the provisions of Developer's by-laws, or of any agreement or instrument to which Developer is a party to or by which it may be bound.

(c) Developer is not a party to any Bankruptcy proceedings currently pending or contemplated, and as of the date of Developer's execution of this

Agreement Developer has not been informed of any potential involuntary Bankruptcy proceedings.

(d) To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

(e) Developer shall timely and fully comply with all of the terms and conditions of this Agreement in all material respects.

(f) Developer agrees to complete, or cause to be completed, the Public Improvements described herein at its sole cost and expense, except where otherwise noted herein. Developer also agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of such Public Improvements to the Property.

(g) Developer shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the portions of the Project for which Developer is responsible. Developer may develop in accordance with the ordinances, rules, and regulations of the City in effect as of the Effective Date, unless specified otherwise in this Agreement.

(h) The cost of the Public Improvements and all other improvement expenses associated with the Project shall be funded through the use of the Developer's own capital or through credit secured solely by that Developer. Developer may use any or part of the Property for which it has an ownership interest as collateral for the construction loan or loans as required for the financing of the Project; however, no property with a lien still attached may be offered to the City for dedication.

(i) In accordance with Texas Government Code Chapter 2264.051, Developer certifies that it, and all branches, divisions or departments of the Developer do not and will not knowingly employ an undocumented worker, as that term is defined in by Texas Government Code Chapter 2264.

(j) Developer shall pay, or cause to be paid, monthly rates and charges for all utilities (such as water, electricity, and sewer services) used by Developer in regard to the development of the Project.

6. City's and SEDC's Covenants and Duties.

(a) City Grant Payments. Notwithstanding any provision herein to the contrary, the City shall not be obligated to pay any amount that exceeds the

Maximum Grant Amount attributed to the City. Grant payments shall be made from sources contemplated by this Agreement over a period not to exceed the Expiration Date, subject to timely and full satisfaction of all applicable duties and terms within this Agreement. Further, City's obligations to pay Developer shall cease upon the earlier of: (1) payment in full of the Maximum Grant Amount; (2) reaching the Agreement's Expiration Date; or (3) Default by Developer.

(b) SEDC Grant Payments. Notwithstanding any provision herein to the contrary, the SEDC shall not be obligated to pay any amount that exceeds the Maximum Grant Amount attributed to the SEDC.

7. Substantial Compliance and Default. Failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant shall be considered an act of "Default" by the failing Party if uncured within sixty (60) days of receiving written notice from any other Party, subject to Force Majeure. Developer may request relief from performance of any terms of this Agreement if Developer is prevented from compliance due to Force Majeure. To obtain relief based on Force Majeure, Developer(s) shall submit a written request for consent to the City, such consent not to be unreasonably withheld, delayed, or conditioned. Failure of Developer to timely and substantially cure a Default will give the City the right to terminate this Agreement as reasonably determined by the City Council of the City of Schertz, Texas.

(a) **Construction**. All Improvements constructed on or installed, including personal property, within the Facility required by this Agreement shall be completed within 730 days from the Effective Date, and failure to comply with this section shall cause the automatic termination of this Agreement without the need for any further action by City; and, City shall have no obligation to make any Grant Payments to Developer. Enforcement of this section is subject to Force Majeure. In the event of unforeseeable third-party delays, which are not Force Majeure, and upon a reasonable showing by Developer that it has in good faith commenced and is diligently pursuing the correction, removal, or abatement of such delays by using commercially reasonable efforts, the City of Schertz City Council may consent to and excuse any such delays.

(b) **Full Time Employees**. This section shall apply in any year that the number of Full-Time Equivalent Employees falls below the number required by this Agreement. The Grant Payments shall be prorated for each Year of the Agreement in which the Developer fails to maintain the required number of Employees for that year determined as follows:

(i) **Full-Time Employees**. Starting January 1, 2025, each year the number of actual Full-Time Employees reported by Developer shall be subtracted from the required number of Full-Time Employees and if the difference is a positive number the Maximum Grant Amount shall be reduced by multiplying the difference by \$5,000.00. As an example, in reporting year 2023 if the difference between the reported Full-Time

employees and required Full-Time employees is 1, the Maximum Grant Amount shall be reduced by \$5,000.00.

(c) Reports and Information. Developer's failure to timely and substantially comply with the reporting requirements of this Agreement shall be a default; and, City shall be under no obligation to make any Grant Payment until compliance with such reporting requirements.

(d) Recapture. In the event of Default by the Developer, the City and SEDC shall as the sole and exclusive remedy for Default hereunder, after providing Company notice and an opportunity to cure, have the right to discontinue all future Grant payments and recapture all amounts previously paid under this Agreement (as applicable, the "Recaptured Amount").

(i) The Recaptured Amount shall be paid by the Developer within one hundred eighty (180) days after the date Developer is notified by the City of such Default (the "Payment Date") provided said Default was not cured. In the event the Recaptured Amount is not repaid by the applicable Payment Date, the unpaid portion thereof shall accrue interest at the rate of two percent (2.00%) per annum from the Effective Date until paid in full.

ARTICLE VI TERMINATION

1. **Termination.** This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement's Expiration Date;
- (c) Default by Developer and termination by the City.

2. **Extension Beyond Term and Reimbursement.** In recognition of the fact that Grants are, by necessity, calculated and paid after taxes have been levied and paid to the City and, therefore, will always be paid in arrears, the Expiration Date of this Agreement will be extended until any and all Grants collected during the preceding year have been distributed by the City to Developer.

ARTICLE VII DISPUTE RESOLUTION

1. **Mediation.** If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties in dispute shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties in dispute agree to try in good faith to settle the dispute by mediation under the Mediation Rules of the American Arbitration Association before resorting to

litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party in dispute with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. The Parties in dispute shall notify the Party not in dispute of any scheduled mediation at least fourteen (14) days prior to the mediation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, and arbitration collectively known as alternate dispute resolution (“ADR”) shall be assessed equally between the City and the Party in dispute with each party bearing their own costs for attorneys’ fees, experts, and other costs of ADR and any ensuing litigation. Any Party not directly in dispute shall receive notice at least thirty days prior of any scheduled meditations and/or arbitrations.

2. During the Term of this Agreement, if Developer files and / or pursues an adversarial proceeding against the City or SEDC regarding this Agreement then, at the City’s and SEDC’s option, all access to the Grants to that Developer provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest-bearing account until the resolution of such adversarial proceeding.

ARTICLE VIII MISCELLANEOUS

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Director of the Schertz Economic Development Corporation shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City Council of the City of Schertz, Texas, on behalf of the City related thereto.

2. Mutual Assistance. City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Representations and Warranties. City represents and warrants to Developer that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represent and warrant to the City that each individually has the requisite authority to enter into this Agreement.

Assignment. Developer shall have the right to assign all of their rights, duties, and obligations under this Agreement for all or some of the Property to a duly qualified third party upon approval by the City Council on behalf of the City. In addition, a Developer may assign its rights to receive payment under this Agreement to a lender, and upon receipt of such assignment in writing by the City, and the City’s further receipt of a written notice from such lender to pay such lender directly, the City will deliver amounts owing to such Developer hereunder to such lender (payable to such lender) until such time such lender authorizes otherwise in writing, and

City shall be entitled to rely on any such assignment, notice and/or authorization without investigation.

4. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer at no time will be acting as agents of the City or SEDC and that all consultants or contractors engaged by Developer respectively will be independent contractors of the Developer; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that neither the City nor SEDC shall be liable for any claims that may be asserted by any third party occurring in connection with services performed by each Developer respectively under this Agreement, unless any such claims are due to the fault of the City or SEDC.

(b) By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement; nor shall any board member of the SEDC.

5. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery at the time of such delivery, facsimile with receipt confirmation at the time of transmission of such facsimile, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, at the time of such deposit, addressed to the Party at the address set forth below:

If intended for City: City of Schertz
Attention: City Manager
1400 Schertz Parkway
Schertz, TX 78154

If intended for SEDC: Schertz Economic Development Corporation
Attention: Exec. Dir. of Economic Development
1400 Schertz Parkway
Schertz, TX 78154

With a copy to:

Denton, Navarro, Rocha, Bernal, & Zech PC
Attention: T. Daniel Santee
2517 North Main Avenue
San Antonio, Texas 78212

If to Developer:

3009 OAC Investments, LLC
Attention: Nick Rispoli & Marlee Kutzer
18756 Stone Oak Pkwy Ste 102
San Antonio, TX 78258
nrispoli@cbharper.com & mkutzer@cbharper.com

With a copy to:

Langley & Banack
Attention: James Lowery
Address 745 E Mulberry Ave #700,
Address San Antonio, TX 78212

Any Party may designate a different address at any time upon written notice to the other Party.

6. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

7. Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Guadalupe County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8. Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the City Council of the City of Schertz, Texas, and the SEDC Board of Directors.

9. Legal Construction. In the event any 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 other provisions of this Agreement, and it is the intention of the Parties to this Agreement 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 and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

10. Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute,

whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

11. Payment of Legal Fees. Developer commits to reimburse the City for the necessary legal fees and third-party consultant fees incurred by the City in the preparation of this Agreement and any amendment to this Agreement requested by Developer. Timely payment shall be made within 60 days of submittal of invoice to Developer by the City. Each Party shall bear its own attorney's fees in connection with any dispute resolution necessary under this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement.

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 various and several paragraphs.

14. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

15. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

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

17. Employment of Undocumented Workers. During the Term of this Agreement, each Developer agrees to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), that Developer shall be in Default and repay the amount of the Grants and any other funds received by that Developer from the City as of the date of such violation within one hundred twenty (120) days after the date the defaulting Developer is notified by the City of such violation, plus interest at the rate of six percent (6.00%) compounded annually from the date of the violation until paid in full. A Developer is not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of Developer or by a person with whom the Developer contracts, or the other Developer, provided however that identical federal law requirements provided for herein shall be included as part of any agreement or contract which each Developer enters into with any subsidiary, assignee, affiliate, or franchisee for which Grants provided herein will be used.

18. Indemnification. **DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND SEDC, AND THEIR RESPECTIVE OFFICERS, AGENTS AND**

EMPLOYEES (COLLECTIVELY THE “CITY”) HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, ADJUSTMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO THIS AGREEMENT, AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY SUCH DEVELOPER UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE CITY. DEVELOPER IS RESPONSIBLE FOR ITS OWN ACTS OR OMISSIONS UNDER THIS SECTION. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

19. Additional Instruments. City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

20. Estoppel Certificate. Any party hereto may request an estoppel certificate related to the Project (hereafter referred to as “Certificate”) from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate may include, but is not limited to, statements that this Agreement is in full force and effect without default, information on Grants that have been issued and Grants that have been requested, and such other matters reasonably requested by the Party requesting the Certificate.

The remainder of this page intentionally remains blank and signature pages to follow:

Executed on this _____ day of _____ 2022.

CITY OF SCHERTZ, TEXAS

By: _____
City Manager

ATTEST:

By: _____
Interim City Secretary

APPROVED AS TO FORM:

By: _____
_____, City Attorney

Executed on this _____ day of _____ 2022.

SCHERTZ ECONOMIC DEVELOPMENT CORPORATION

By: _____

ATTEST:

By: _____

Executed on this _____ day of _____, 2022

DEVELOPER
a Texas limited liability _____

By: _____

Name: _____

Title: _____

EXHIBITS

Exhibit A: Property



