

**WILLIAMSON COUNTY AND DEVELOPMENT 2000, INC.
CHAPTER 381 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT**

This **CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (this "**Agreement**") is made and entered into by and between **WILLIAMSON COUNTY** (hereinafter referred to as "**County**"), a Texas political subdivision, and **UPPER FORTY, LLC**, a Texas limited liability company ("**Upper Forty**"), duly authorized to do business in the State of Texas, (hereafter may be collectively referred to as "**OWNER**"), as of the 13th day of AUGUST, 2021 (the "**Effective Date**") for the purposes and considerations stated below:

WHEREAS, the Upper Forty owned one tract of land, being approximately 40 acres of property located Williamson County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (the "Tract A"); and

WHEREAS, Tract A is under contract for sale to CMHH Heritage, LLC (the "COMPANY"), which intends to construct the Facilities and locate and operate a cutlery manufacturing, distribution, and retail facility (the "Business") on Tract A; and

WHEREAS, the County desires to provide certain Chapter 381 reimbursements to Owner in exchange for Owner's construction of certain Road Improvements, as described herein, to facilitate the development of Tract One; and

WHEREAS, the Chapter 381 reimbursements are conditioned upon the construction of the Road improvements; but also the location of a new company on Tract A and based on the conditions stated herein; and

WHEREAS, the County has the authority under Chapter 381 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the County; and

WHEREAS, the County determines that the grants as specified herein to Owner will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the County; and

WHEREAS, over a period of years, the Owner intends to expend at least \$1,000,000 for the construction of the Road Improvements; and

WHEREAS, the County has concluded and hereby finds that this Agreement clearly promotes economic development in the County by furthering the transportation needs of the County and, as such, meets the requisites under Chapter 381 of the Texas Local Government Code and further, is in the best interests of the County.

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

SECTION 1. TERM.

The "**Term**" of this Agreement shall be for ten (10) full tax years commencing on the first full tax year following the issuance of a Certificate of Occupation by the City for a 300,000 square foot

building constructed by the Company on Tract A, or until Owner is reimbursed for the final actual cost of the Road Improvements by the City of Leander and County, whichever occurs earliest.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

(a) Ad Valorem Taxes. The words "**Ad Valorem Taxes**" shall mean all those real property ad valorem taxes which are required to be paid to the County based on the assessed value of the property described as Tract One. Ad Valorem Taxes include those taxes paid into the County Operation and Maintenance Fund, but specifically excludes the payment into the County Road and Bridge Fund and the County Debt Fund.

(b) Agreement. The word "**Agreement**" means this Chapter 381 Economic Development Program and Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

(c) City. The word City shall mean the city of Leander, Texas.

(d) County. The word "**County**" means Williamson County, Texas. For purposes of this Agreement, including the address for sending notice, County's address is 710 Main Street, Suite 101, Georgetown, TX 78626.

(e) Grant. The word "**Grant**" means a payment to Owner under the terms of this Agreement computed with reference to the Ad Valorem Taxes paid to the County by the Owner, and payable from the County's Operation and Maintenance Fund in the amount set forth in Section 4 below.

(f) Grant Submittal Package. The words "**Grant Submittal Package**" mean the documentation required to be supplied to County as further described in Section 3 below as a condition of receipt of any Grant.

(g) Owner. The word "**Owner**" means **UPPER FORTY, LLC**, a Texas limited liability company. For the purposes of this Agreement, including the address for sending notice, Owner's address is _____.

(h) Program. The word "**Program**" refers to the adoption of this Economic Development Program as called for in Section 381.004 of the Texas Local Government Code.

(i) Project. The word "**Project**" shall have the meaning described in the Recitals above.

(j) Property. The word "**Property**" means all of that real property and improvements, and personal property described in the Recitals of this Agreement.

(k) Purpose. The word "**Purpose**" shall have the meaning described in the Recitals above.

(l) Term. The word "**Term**" means the term of this Agreement set forth in Section 1 above.

(m) WCAD. The term "**WCAD**" refers to the Williamson County Central Appraisal District.

SECTION 3. OBLIGATIONS OF OWNER.

During the Term, Owner shall comply with the following terms and conditions:

(a) In consideration of the County entering into this Agreement, Owner will expend an estimated amount of \$1,600,000 for the construction of a Roadway Improvement at the location shown on Exhibit B, in accordance with the details attached hereto.

(b) Owner shall dedicate to the County, free and clear of all liens, all right-of-way needed by the County for the Roadway. Owner agrees that the Roadway will be competitively bid pursuant to the Texas Competitive Bidding Act

(c) In addition to the construction of the Roadway, Owner understands that any Chapter 381 reimbursements are specifically conditioned upon the Company locating on Tract A and receiving a Certificate of Occupancy from the City for the construction of a 300,000 square foot building on Tract A.

~~(d) On or before the 1st day of March of each calendar year during the Term,~~
Owner agrees to submit a Grant Submittal Package to County as follows:

~~(i) Evidence reasonably acceptable to County that Company has paid by January 31st of each year all Ad Valorem Taxes due for the previous tax year.~~

~~(ii) Unless otherwise agreed by County and Owner, each Grant Submittal Package shall be in a form as reasonably approved by the County and delivered to Owner upon execution of this Agreement. If Owner fails to timely submit a Grant Submittal Package for a particular year, then County shall give Owner written notice of Owner's failure to timely submit such Grant Submittal Package, and Owner shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package.~~

SECTION 4. OBLIGATIONS OF COUNTY.

During the Ten-Year Term and so long as an Event of Default has not occurred and is continuing as set forth in this Agreement (provided, however, an Event of Default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure periods as set forth herein), County will comply with the following terms and conditions:

(a) For each tax year during the Term and beginning in the first tax year of the Term, a Grant in an amount equal to 50% of the Ad Valorem Taxes paid by the Company or its successors against the property described as Tract One herein shall be reimbursed by County to Owner on an annual basis upon Owner's satisfaction of the requirements of this Agreement. County agrees to process any Grant to be paid to Owner within sixty (60) days after the date of approval by County of the Grant Submittal Package.

(b) The above-described Grant shall be paid throughout the Term so long as there is full compliance with the terms and condition of this Agreement. Upon final payment of the Grant, this Agreement shall terminate, and neither County nor Owner shall have any further obligations hereunder. All future Ad Valorem Taxes thereafter required to be paid by Owner to County shall be retained in full by County, as such may be determined subject to any of Owner's rights to challenge or reduce such Ad Valorem Taxes as may exist at such time, or from time to time thereafter. The parties hereby agree that the maximum reimbursement amount shall be \$1,600,000, or the actual cost of the Road Improvement, whichever is less. Once Owner has been paid this amount, this Agreement shall terminate automatically, even if the full ten-year term is unexpired. Notwithstanding anything contained herein to the contrary, the Chapter 381 Grants paid by the County under this Agreement combined with the 380 Grant paid by the City shall not exceed the actual cost to design and construct the Road Improvements.

(c) Owner agrees that it is the sole obligation of Owner to present satisfactory evidence to County that Company has paid all due and owing Ad Valorem Taxes to County. If for any reason, the County is unable to verify that the Ad Valorem Taxes were paid to County by the Company on the Property, County is under no obligation to tender the Grant to Owner. County's determination as to the payment of the Grant to Owner is final.

SECTION 5. EVENTS OF DEFAULT; TERMINATION WITH DEFAULT

Each of the following shall constitute an event of default under this Agreement ("**Event of Default**"):

(a) Failure to materially comply with any terms and conditions of this Agreement. County shall notify Owner in writing of such Event of Default. Owner shall have ninety (90) days after receipt of such notice to cure the Event of Default, and failure to do so may result in the termination of this Agreement by County sending written notice thereof to Owner that County's and Owner's obligations hereunder shall end mutually as of the date of such notice (unless otherwise set forth herein).

(b) The dissolution or termination of Company's existence as an active business or concern, Company's insolvency, appointment of receiver for any part of Company's assets, any assignment of all or substantially all of the assets of Company for the benefit of creditors of Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.

(c) The failure of the Company to pay Ad Valorem taxes required to be paid to the County on Tract A or the failure of the Owner to pay Ad Valorem Taxes it owes the County on Tract B. Any reimbursements as described herein will be withheld in the event any party protests their Ad Valorem Tax value with the Williamson County Appraisal District.

(d) The failure of County to pay all or any portion of a Grant to Owner when due and owing under the terms of the Agreement. Owner shall notify County in writing of such Event of Default. County shall have thirty (30) days after receipt of such notice to cure the Event of Default and failure to do so may result in the termination of this Agreement by Owner sending written notice thereof to County that Owner's and County's obligations hereunder shall end mutually as of the date of such notice (unless otherwise set forth herein); provided, however that Owner may pursue such remedies available to it by law or equity, including, specific performance.

SECTION 6. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT.

County may terminate this Agreement without an Event of Default, effective immediately, if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that Chapter 381 Economic Development Agreement grants, such as the Grant included in this Agreement, are deemed to be unconstitutional debt.

SECTION 7. GRANT RECAPTURE.

In the event of an Event of Default by Owner which is not cured within the time periods set forth in Section 5 or in the otherwise additional time allowed by County as Owner's total cure period, and upon termination by County of this Agreement as set forth above, County may recapture and collect from Owner the amount(s) of Grants already paid by County to Owner for each year directly preceding the date of the notice of default. Owner shall pay to County the foregoing amount(s) within thirty (30) days after the County makes written demand for same. No further Grants shall then be payable to Owner and this Agreement shall be of no further force or effect.

In addition to other available remedies under law and equity, the County shall have all remedies for the collection of the amount(s) of the Grants as provided generally in the Texas Tax Code for the collection of delinquent Ad Valorem Taxes.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of 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.

(b) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Williamson County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Williamson County, Texas.

(c) Assignment. Owner understands and agrees that the County expressly prohibits Owner from selling, transferring, assigning or conveying in any way any rights to receive the Grant without the County's prior written consent.

(d) Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. County warrants and represents that the individual executing this Agreement on behalf of County has full authority to execute this

Agreement and bind County to the same. Owner warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

(e) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(f) Execution of Agreement. The Commissioners Court shall authorize the County Judge to execute this Agreement on behalf of County.

(g) Force Majeure. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

(h) Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above in Section 2. 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. For notice purposes, each party agrees to keep the other informed at all times of its current address.

(i) 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.

(j) Sovereign Immunity. Except as such waiver may otherwise be specifically provided for to the contrary under Texas statutes or controlling case law, no party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

(Signatures on the following pages)

OWNER:

UPPER FORTY, LLC, a Texas limited liability company

BY:



COUNTY:

COUNTY OF WILLIAMSON, TEXAS

By:

Bill Gravell, Jr., County Judge

Attest:

By:

Nancy Rister, County Clerk

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