

**SECOND AMENDED AND RESTATED
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF JERSEY VILLAGE, TEXAS
AND
COLLABORATE DEVELOPMENT GROUP LLC**

This Chapter 380 Economic Development Agreement (this “Agreement”) is entered into between **COLLABORATE DEVELOPMENT GROUP LLC**, a Texas limited liability company (the “Owner”), and **CITY OF JERSEY VILLAGE, TEXAS**, a home rule city (“City”).

RECITALS

WHEREAS, the City and the Owner have previously entered into that certain Chapter 380 Economic Development Agreement dated as of March 18, 2019 (the “Prior Agreement”); and

WHEREAS, the City and the Owner desire to change the Owner’s entity name herein from “Collaborate Special Projects LLC” or “Collaborate Development LLC” to “Collaborate Development Group LLC” and to amend and restate the Prior Agreement to read as follows:

WHEREAS, City Council of City is authorized to make certain economic development grants to Owner in recognition of, conditioned upon and derived from the positive economic benefits which will accrue to City through Owner’s efforts to develop a commercial retail, hotel and restaurant project together with certain public improvements for the benefit of City, all as more particularly described herein, on approximately 43 acres of land, as more particularly described and depicted on the attached Exhibits B and C (the “Property”); and

WHEREAS, Owner estimates the total Capital Investment in the Project (as defined herein) will be approximately one hundred and forty-five million Dollars (\$145,000,000.00); and

WHEREAS, City recognizes that development of the Project in City represents an opportunity to provide significant economic benefit and opportunities for its citizens; and

WHEREAS, City finds that development of the Project will add significant new revenues to City’s tax base and will result in the creation of a minimum of Two Thousand (2,000) hours of paid time averaged over a twelve (12) month period, which will promote state and local economic development and stimulate business and commercial activity in City thereby enhancing the economic stability and growth of City; and

WHEREAS, City desires to offer incentives to Owner over a period of time to induce Owner to contribute its professional development services, skills and acumen to develop the Project in City and to enable Owner to develop the Project successfully in a manner that will be of lasting and significant benefit to City.

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

1.
Authority

City's execution of this Agreement is authorized by Chapter 380, Texas Local Government Code, as amended, and by the Resolution and constitutes a valid and binding obligation of City in accordance with the terms and conditions hereof. Owner's execution and performance of this Agreement constitutes a valid and binding obligation of Owner in accordance with the terms and conditions hereof. City acknowledges that Owner will act in reliance upon City's performance of its obligations under this Agreement in deciding whether to commit substantial resources and money to develop the Property. Owner acknowledges that City is acting in reliance upon Owner's performance of its obligations under this Agreement in agreeing to commit substantial resources to the Project on the terms described herein.

2.
Definitions

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

2.1 "Act of Default" or "Default" means failure to timely, fully, and completely comply with one or more requirements, obligations, performance criteria, duties, terms, conditions or warranties, as stated in this Agreement.

2.2 "Ad Valorem Tax Effective Date" means March 31st of the year immediately following the first full calendar year following Completion of Project. For example, if Completion of Project occurs on September 1, 2020, then the Ad Valorem Tax Effective Date for Project would be March 31, 2022.

2.3 "Ad Valorem Tax Revenues" means the amount of ad valorem tax revenues collected by City with respect to the Assessed Taxable Value.

2.4 "Assessed Taxable Value" means the taxable assessed ad valorem tax values set annually by the Harris County Central Appraisal District with respect to the Property, improvements, and tangible personal property (with a depreciation schedule of seven (7) years or greater) included in the Project, including all improvements now or hereafter included therein, but excluding any assessed value attributable to the Property as of January 1, 2019 and excluding any assessed value attributable to inventory.

2.5 "Capital Investment" means the investment in the Project made by or on behalf of Owner (including for tenant improvements, whether expended by Owner or tenant) to construct and equip the Project.

2.6 "Certificate of Occupancy" shall mean that document entitled "Certificate of Occupancy" (or other similar title) issued by City upon substantial completion of certain

portions of the Project in accordance with all applicable codes, regulations, and ordinances of City. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, but shall include any temporary certificate of occupancy or other document authorizing temporary or conditional occupancy.

2.7 “Chapter 380 Payment(s)” means the amount(s) paid by City to Owner under Sections 5.2, 5.3 and 5.4 of this Agreement, which amounts may be paid from any lawful source other than Ad Valorem Tax Revenue and other than Hotel Occupancy Tax except as to payments made under Section 5.4.; provided that the aggregate of such Chapter 380 Payments paid to Owner shall not exceed twenty-nine million, two hundred fifty thousand Dollars (\$29,250,000) over the life of the transaction; provided further that this aggregate cap on payments shall not apply to any Chapter 380 Payments made to the Village Center Local Government Corporation, which payments shall not be capped.

2.8 “City of Jersey Village” or “City” means the governing municipal corporation, the area that is within the city limits of City of Jersey Village and which is located within Harris County, Texas.

2.9 “City Owned Property” means the property currently owned by the City in the Village Center, as more particularly described and provided in the Master Development Agreement, to be entered into by City and Owner at a later date.

2.10 “Commence Construction” means (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction pursuant to the plans therefor have been issued by all applicable governmental authorities; (iii) a notice to proceed has been issued to the contractor; and (iv) construction on substantial portions of the site development components (such as drainage, extensive grading or utilities) has commenced.

2.11 “Completion” means, with respect to the Project, (i) substantial completion of construction of the applicable improvements in accordance with the terms of this Agreement and the Development Agreement and the plans and specifications therefor, (ii) issuance of Certificates of Occupancy for the improvements for which Certificates of Occupancy may be issued, (iii) acceptance by City for maintenance of any related City-owned Public Infrastructure, (iv) either (A) Open for Business, with respect to portions of the Project or applicable elements thereof that are operated by or on behalf of Owner, or (B) Leased and Open for Business, with respect to portions of the Project leased from Owner and operated by a tenant and (v) actual expenditure by Owner on the Project of at least the amount of Capital Investment for the Project estimated herein.

2.12 “Compliance” means timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty, condition or warranty as stated in this Agreement. Compliance shall not mean Substantial Compliance or anything less than full Compliance.

2.13 “Construction Sales Tax Revenues” means the One Cent Sales Tax Revenues paid by Owner in connection with the construction of the Project.

2.14 “Continuously Operate” means (i) operation of the designated element of the Project continuously in accordance with the standards of operation of comparable facilities, without interruption for any reason other than Down Times and (ii) possession of all personal property and inventory necessary for the operation of the designated element in accordance with the standard of operation of comparable facilities.

2.15 “Development Fees” means any and all fees imposed by City upon Owner (including but not limited to Owner’s affiliates, assigns, successors, related parties, contractors and subcontractors) in any way related to Owner’s platting, zoning, permitting, designing, building, constructing or developing the Project. Development Fees shall include but not be limited to impact fees, permitting/approval fees, inspection fees and supervision fees.

2.16 “Down Times” means temporary cessation of operation of areas or all or substantially all of a facility for, and only for, limited periods of time for the limited purpose of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) during the period following any fire or other casualty or condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent, and only to the extent, necessary to adjust the claim and take other actions related to the repair and restoration of the facility;

(b) as a result of such commercially reasonable interruptions for repairs or remodeling as are incidental to the normal operation of the facility after notice to the City with regard thereto;

(c) during any period required by applicable law, to the extent, and only to the extent, that the necessity of compliance is not the result of Owner’s failure to timely fulfill its obligations under this Agreement;

(d) in keeping with the standard hours of operation of comparable facilities taking into account the seasonal nature of the Project, the fact that operation of portions of the Project are subject to weather conditions and that the Conference Center is not intended for continuous operation, but is booked for events and meetings from time to time; or

(e) during any period of Force Majeure or during any period Owner, Operator or any other operator of any element of the Project reasonably deems it is socially irresponsible to operate all or part of the facilities due to circumstances which are not Force Majeure but under which a socially responsible operator would temporarily curtail or cease operations, such as if a pervasive flu or other communicable illness were present or threatened;

provided, however, that during the Down Times described in clauses (a) through (e) above, Owner shall (i) use its commercially reasonable efforts to minimize the disruption of such Down Time and (ii) use its commercially reasonable efforts to minimize the disruption to the areas of

the facility which remain open to the public, if any, and the services, aesthetic appearances and public and guest access to and in such portions of the facility.

2.17 “**Economic Development Grant**” means the Chapter 380 Payments.

2.18 “**Effective Date**” means the date this Agreement has been signed by all of the parties hereto.

2.19 “**Federal Bankruptcy Code**” means Title 11, United States Code, as amended, and any successor statute.

2.20 “**Force Majeure**” means any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party’s fault, negligence or willful misconduct and (d) could not be avoided by the Party who suffers it by the exercise of commercially reasonable efforts (provided that such commercially reasonable efforts shall not require such Party to expend a material amount of money to avoid the act giving rise to a Force Majeure). Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include but not be limited to: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disruption, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) the unavailability of necessary and essential equipment and supplies; (vii) a breach by the City of this Agreement or any other actions, omissions of or delays by a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach or noncompliance by the affected Party of its obligations under this Agreement or any applicable law; and (viii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) changes in market condition; or (C) weather conditions which could reasonably be anticipated by experienced contractors operating at the relevant location.

2.21 “**Gross Leasable Space**” means (i) that interior space under roof and air conditioned and heated and ready for finish-out work for a selected tenant, and (ii) as applicable, the exterior patio space connected to an interior space, in each case that is ready for finish-out work for a selected tenant.

2.22 “**Hotel**” means one hotel having at least one hundred ten (110) sleeping rooms rated by Smith Travel Research in a category at or above “Midscale with Food & Beverage”; provided, however, that if Smith Travel Research shall no longer publish United States hotel ratings, a rating publication mutually agreeable to City and Owner shall be substituted.

2.23 “**Hotel Occupancy Tax**” means the tax authorized by Chapter 351, Texas Tax Code, as amended (including any successor statute) which a municipality may elect to impose on the price paid for use or possession of rooms in a hotel or other transient lodging accommodations.

2.24 “**Hotel Occupancy Tax Revenues**” means Hotel Occupancy Tax revenues received by City and attributable to the Project Hotel.

2.25 “**Village Center Local Government Corporation**” means the local government corporation that owns the Hotel, as more particularly described in the Master Development Agreement between the City, Village Center Local Government Corporation, and Owner.

2.26 “**Incentive Period**” means the period beginning upon the Sales Tax Effective Date and concluding at the end of the Term.

2.27 “**Insolvent**” means failure to timely pay debts in the ordinary course of business or failure to pay all debts when and as they become due, or insolvent within the meaning of the Federal Bankruptcy Code.

2.28 “**Village Center**” means the Jersey Village Center Development.

2.29 “**Leased and Open For Business**” means Gross Leasable Space which has been leased for a term of one (1) year or more and for which a tenant is open for full-time business operations with products and/or services that are necessary for the operation of the business in accordance with its business plan for full-time operations taking into account the nature of its business.

2.30 “**Management Agreement**” has the meaning assigned to such term in Section 6.1.

2.31 “**Master Development Agreement**” means a separate but related document to this Agreement that will, among other things, provide for the overall design and construction of Village Center. The Master Development Agreement shall be executed by the City, Village Center Local Government Corporation, and the Owner or the Owner’s designee.

2.32 “**Notice**” has the meaning assigned to such term in Section 13.10.

2.33 “**Open for Business**” means open for full-time business operations with products and/or services that are necessary for the operation of the business in accordance with its business plan for full-time operations taking into account the nature of its business.

2.34 “**Owner**” means Collaborate Development Group, a Texas LLC whose principal place of business is in Houston, Texas.

2.35 “**Owner’s Designee**” means Village-Center Retail & Office LLC, Collaborate Special Projects LLC, or another designee of Owner who will execute the

assignment and close on the purchase of certain property, as more particularly described in Section 6.2.1 of this Agreement.

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

2.37 “**Project**” means Owner’s planned development of the Property, all of which shall meet or exceed City Standards set forth in Section 4.1.2 herein; provided that the Project shall not include any improvements or Public Infrastructure directly funded or financed by the City.

2.38 “**Property**” means approximately forty-three (43) acres of land associated with the Project, and which is more particularly described and depicted on the attached Exhibits B and C.

2.39 “**Property Under Option**” means the property currently under option by the City, as more particularly described in Exhibit C, to be assigned to the Owner’s Designee and purchased by Owner’s Designee as set out in Section 6.2.1 herein.

2.40 “**Public Infrastructure**” means the public infrastructure improvements serving the Project as more particularly described in Exhibit A hereto. The quantities and dimensions listed on Exhibit A are approximate, with the actual quantities and dimensions of the Public Infrastructure to be as set out in the final plans and specifications therefor submitted by Owner and approved by the City and all applicable agencies with jurisdiction prior to the construction of such Public Infrastructure.

2.41 “**Sales Tax Effective Date**” means the date commencing as of the date that the Village Center first has Sales Tax or Hotel Occupancy Tax allocable to the City and ends with the Term of this Agreement.

2.42 “**Sales Tax Revenues**” means sales tax revenues of the City and the amount of money equivalent to the City's municipal sales and use tax, at the rate of one and one-half percent (1.5%), pursuant to Section 321.103 of the Texas Tax Code, as amended and actually received from the Texas State Comptroller.

2.43 “**Sales and Use Tax for Property Tax Reduction**” means the sales and use tax revenue, at the rate of one-half of one percent (0.50%) percent, generated for use by the City.

2.44 “**Substantial Compliance**” pertains solely to acts of Owner under the performance criteria described in Section 4, being less than full and complete Compliance and being ninety percent (90%) or more of full Compliance.

2.45 “**Term**” means the period defined in Section 3 of this Agreement.

3.
Term

The term of this Agreement (the “Term”) will be for thirty (30) years from the Effective Date of the Agreement.

4.
Owner’s Performance Criteria

4.1 Owner’s Performance. In consideration of City’s agreements hereunder, Owner agrees that, if Owner proceeds with the Project, the following performance requirements must be met in order to qualify for the Chapter 380 Payments related to such Project:

4.1.1 Construction of Project. Unless Owner terminates this Agreement pursuant to Section 13.9 hereof, Owner contracts and agrees that it will Commence Construction, subject to extension for Force Majeure, of Project on or before the second anniversary of the Effective Date and will diligently pursue such construction until Completion thereof on or before May 30, 2022, subject to extension for Force Majeure.

Schedule A: Construction of Project	
Owner’s Performance Requirements	Owner’s Time of Performance
Commence Construction.	On or before second anniversary of the Effective Date, subject to extension for Force Majeure.
Cause Completion.	On or before May 30, 2022, subject to extension for Force Majeure.

4.1.2 Compliance with City Standards. Owner agrees that development of the Project will comply with all applicable City codes and ordinances. For any development requirements not covered in this Section or in the remainder of the Agreement, the applicable City code and ordinance provisions shall control.

5.
City’s Performance Criteria

5.1 Economic Development Grant

5.1.1 Economic Development Grant Calculation and Funding. City is obligated to pay to Owner or Village Center Local Government Corporation one or more payments in the amounts indicated by applying the calculations referenced in Sections 5.2, 5.3 and 5.4 hereof, from any lawful source other than Ad Valorem Tax Revenues or Hotel Occupancy Tax Revenues (except as provided in Section 5.4 hereof) as described in Sections 5.2 and 5.3.1 hereof during the Term, subject to the satisfaction of Owner’s Performance Criteria and Owner’s timely and full compliance with all applicable terms and conditions contained in this Agreement. The portion of the Economic Development

Grant to be paid to Owner shall not exceed twenty-nine million, two hundred fifty thousand Dollars (\$29,250,000) over the life of the transaction. This aggregate cap on the Economic Development Grant payments shall not apply to any Hotel Occupancy Tax Payments made to Village Center Local Government Corporation, which payments shall not be capped.

In recognition of the fact that a portion of the Economic Development Grant will be, by necessity, calculated and paid after taxes have been levied by and paid to City and, therefore, will always be paid in arrears, City's obligation to pay installments of the Economic Development Grant to Owner shall cease when all Economic Development Grant payments accruing to Owner with respect to the period from the Effective Date through the conclusion of the Term have been paid in full by City to Owner.

5.1.2 Timing of Payments. Notwithstanding anything herein to the contrary, while City may pay the Economic Development Grant from any lawful source other than Ad Valorem Tax Revenues or Hotel Occupancy Tax Revenues (except as specified in Section 5.4 hereof), City must pay the Chapter 380 Payments to Owner at the times and in the amounts set forth in this Agreement, provided Owner is in compliance with its obligations under this Agreement at the time such payments are due.

5.2 No Ad Valorem Tax Based Grant. The City expressly reserves one hundred percent (100%) of the Ad Valorem Tax Revenues, and nothing in this Agreement obligates the City to pay any such amounts to the Owner.

5.3 Sales Tax Based Grant

5.3.1 Payments. Commencing on the Sales Tax Effective Date and continuing on the 60th day after receipt by City from the Comptroller of the Sales Tax Revenue for each calendar quarter thereafter, City shall pay Owner an amount equal to the percentage for the applicable year of the Term described below of the Sales Tax Revenue received by City from sales generated on the Project, subject to the limitations set forth in Section 5.1.2 hereof. The payments to be made under this Section shall commence on the start of the Incentive Period and conclude at the end of the Term; provided, that the initial payment after the start of the Incentive Period shall include the applicable percentage of Construction Sales Tax Revenues attributable to the construction of the Project subject to the limitations of Section 5.1.2 hereof. Sales Tax Revenues are presumed to include the amounts of City sales and use tax reported on the monthly sales tax area reports provided by the Comptroller to City. Sales Tax Revenues will include the revenues received by the City from any taxes or other impositions imposed by the City in the future which replace the Sales Tax Revenues received by the City.

The applicable percentages are as follows:

- Years 1 through 30 of the Term = 100% of City 1% Sales Tax Revenues.
- Years 1 through 30 of the Term = 100% of City 1/2% Sales and Use Tax for Property Tax Reduction. Any City 1/2% Sales and Use Tax for

Property Tax Reduction collected in excess of \$175,000 per year will be retained by the City.

- Construction Sales Tax Revenues = 100%; provided, however, that to the extent such Construction Sales Tax Revenues have already been rebated to another business in the City, such duplicate rebate will not be included in Owner's Construction Sales Tax Revenue percentage.

5.3.2 Use of Any Source. The payments made pursuant to this Section 5.3 are measured by reference to Sales Tax Revenue but may be made from any lawful source available to City, other than Ad Valorem Tax Revenues or Hotel Occupancy Tax Revenues, except as provided by Section 5.4.

5.4 Hotel Occupancy Tax Payments. The City shall make Hotel Occupancy Tax Payments as follows:

- Commencing on the Sales Tax Effective Date for the Project and continuing on each anniversary thereof during the Term, City shall pay to Village Center Local Government Corporation 50% of all Hotel Occupancy Tax Revenues.
- Commencing on the Sales Tax Effective Date for the Project and continuing on each anniversary thereof during the Term, City shall pay to Owner 50% of all Hotel Occupancy Tax Revenues subject to the limitations set forth in Section 5.1.2 hereof; provided, however, that Owner must comply with the terms of Section 351 of the Texas Tax Code applicable to the Hotel Occupancy Tax Revenues including, but not limited to, Sections 351.101 (a) through (g), Section 351.103 and Section 351.108 thereof. Further Owner shall deliver to City, upon the City's request, such information and reports which City reasonably requests in order for City to verify that Owner is in compliance with such statutes. Any Hotel Occupancy Tax Revenues remaining unspent by Owner at the expiration or earlier termination of this Agreement shall be paid by Owner to City, which obligation shall survive the expiration or earlier termination of this Agreement. By this Agreement, City is delegating, pursuant to Section 351.101(c) of the Texas Tax Code, the management or supervision of certain programs and activities to be funded by Hotel Occupancy Tax Revenues.

5.5 Development Fees. City shall pay to Owner (as part of the Economic Development Grant) an amount equal to all Development Fees paid by Owner pertaining to the Project. Owner shall be paid for Development Fees attributable to the Project within thirty (30) days after Completion of the Project.

5.6 Amendments or Adjustments to the Economic Development Grant. Nothing in this Agreement prevents the Parties from agreeing in writing to adjust or amend all or a portion of the Economic Development Grant payment schedule or percentages provided in this Section 5.

6.

Property Transfers

6.1 City Owned Property. Owner, or any designee of Owner as may be designated from time to time, agrees to close on the purchase of all City Owned Property, as more particularly described in Exhibit B, prior to August 31, 2019.

6.2 Property Under Option.

6.2.1 Property Under Option. Pursuant to an Assignment Agreement to be entered into following the approval of this Agreement, Owner's Designee agrees to accept the assignment of certain Property Under Option, as more fully described in Exhibit C, from City, and Owner's Designee agrees to execute such option on Property Under Option prior to June 30, 2019. Owner's Designee further agrees to close on the purchase of such Property Under Option prior to August 31, 2019. If Owner's Designee executes such option on Property Under Option, but Owner's Designee fails to close on the purchase of such Property Under Option prior to August 31, 2019, then Owner's Designee agrees to assign the Property Under Option back to City.

6.3 Property to be Leased. City will agree to lease to Owner certain City property, to be more particularly described in the Master Development Agreement, and Owner will agree to make operational lease payments as more particularly described and provided in a lease agreement, to be entered into by City and Owner at a later date.

7.

Owner's Covenants, Warranties, Obligations and Duties

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

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

7.1.2 Execution. The execution of this Agreement has been duly authorized by Owner and Owner's representative signing this Agreement is empowered to execute such Agreement and bind Owner, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Owner's partnership agreement or instrument to which Owner is a party or by which it may be bound.

7.1.3 Enforceability. Owner has the full right, power and authority to execute, deliver and perform the terms and obligations of this Agreement and this Agreement constitutes the legal, valid and binding obligation of Owner, is enforceable in accordance with its terms and does not require the consent of any other party to be so enforceable.

7.1.4 Litigation. No litigation or governmental proceeding is pending or, to the knowledge of Owner or Owner's officers, threatened against or affecting Owner or the Property that may result in any material adverse change in Owner's business, properties or operation.

7.1.5 Untrue Statements. To the best of its knowledge, no certificate or statement delivered by Owner to City in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.

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

7.1.7 Licenses and Authority. To the best of its knowledge, Owner or Operator has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business in Jersey Village, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

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

7.1.9 Timely Commencement. Owner shall timely begin and complete the Project in accordance with the requirements of this Agreement.

7.1.10 Timely Compliance. Owner shall timely and fully comply with all of the terms and conditions of this Agreement.

7.1.11 Management Changes. Owner shall notify City in writing of substantial changes in management within seven (7) days. Substantial changes mean changes in Chairman of the Board, President, or C.E.O.

7.1.12 Civil Rights Acts. Owner agrees that, as to all of the programs and activities arising out of this Agreement, it shall comply fully with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled.

7.1.13 Tenant Lists. Owner shall provide to City in writing lists of all Project tenants or other persons making sales or purchases of taxable items in the Project (the "Project Tenant List"). Owner will periodically and timely notify City of changes to the Project Tenant Lists. Owner is responsible for supplying to City such identifying information for each person on the Tenant Lists as is required by the Comptroller to issue the sales tax area reports described in Section 8.4 herein.

7.1.14 Sales Tax Reports. If the sales tax area reports described in Section 7.1.13 herein are unavailable or otherwise inadequate to allow computation of the Sales Tax

Revenue, Owner shall timely acquire from each tenant a waiver of confidentiality or other document required or approved by the Texas Comptroller that allows City to review individual tenants' reported sales tax information on a quarterly basis throughout the Term of this Agreement as necessary to compute the Sales Tax Revenue

7.1.15 Documentation. Owner will provide to City documentation establishing the amounts of the Construction Sales Tax Revenues.

7.1.16 Payment of Ad Valorem Taxes. All Ad Valorem Taxes shall be paid by January 31 of each tax year for the Village Center, unless being protested in accordance with Texas law. For clarity, Ad Valorem Taxes which are not being protested shall still be paid by January 31. Payment will not be required only for the portion of Ad Valorem Taxes which are being protested in accordance with Texas law.

7.1.17 Reporting of Audits. The Owner shall notify the City of any audit conducted or being conducted regarding the Village Center by the Office of the Texas State Comptroller if such audit changes or affects, or could change or affect, the amounts set forth in the schedule filed with the City. Such notification shall be made as soon as practicable, but in no event later than sixty (60) days after the audit.

8.

City's Covenants, Warranties, Obligations and Duties

8.1 Covenants and Duties. City hereby represents and warrants to Owner that City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

8.2 Facilitation of Development. City covenants and agrees with Owner that it will take the following actions:

8.2.1 Transportation Improvements. City and Owner agree to use their respective reasonable efforts to obtain the necessary approvals from the Texas Department of Transportation, Harris County and any other governmental authority with respect to the final alignment and design of transportation improvements necessary to serve the Project; provided that receipt of such approvals shall not constitute a condition to any rights or obligations of either party under this Agreement.

8.3 Village Center Hotel Incentives. City agrees that it will use reasonable efforts to assist the Owner in making the Village Center Hotel reach its projected stabilized occupancy level within the Hotel's first three (3) years of operations.

8.4 Comptroller Reports. City will request from the Comptroller monthly sales tax area reports identifying the aggregate Sales Tax Revenues remitted by persons on the Project

Tenant Lists and attributable to outlets located within the Project area. City will request that the Comptroller provide Owner copies of the sales tax area reports for purposes of enabling Owner to verify the accuracy of City's calculations and to enable the purposes enumerated in this Agreement to be fulfilled. City and Owner will cooperate in drafting and updating the request to the Comptroller for the sales tax area report. In order to facilitate the requests required of City in this Section, Owner shall provide City such waivers and other documentation signed by it and its tenants as required by City or the Comptroller including those items required by Sections 7.1.13 and 7.1.14 hereof.

9.

Suspensions/Termination

9.1 Suspension and Termination. Under the following circumstances, and at its sole discretion, may temporarily cease making payments under this Agreement and/or terminate this Agreement, without liability to Owner, and all future payment obligations shall automatically cease upon any one of the following events, each of which are an Act of Default.

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

9.1.2 Bankruptcy. The adjudication of Owner as a bankrupt.

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

9.1.4 State or Federal Law Changes. Either Party may terminate this Agreement without an event of default effective immediately if (i) any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 380 Economic Development Agreement rebating Sales and Use Taxes such as this Agreement is an unconstitutional debt; or (ii) the federal government implements the streamlined Sales Tax Revenue or similar legislation in such a manner as to change the consummation of a Sales Tax Revenue event to a tax situs outside of the City, thereby eliminating the City's rights in Sales Tax Revenue paid by the operator of the Village Center. Termination of this Agreement under this subsection of the Agreement shall render this Agreement null and void from that point forward with each Party having no further rights against each other under this Agreement or at law; provided, however, save and except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of Chapter 380 Payments from City to Owner, and including the obligation for repayment of Chapter 380 Payments by Owner to City. In the event that any act of the Legislature or any law, order, rule or regulation of any state or federal administration or judicial entity, shall nullify the terms of this Agreement, or otherwise preclude the performance of this Agreement by either party, or if this Agreement is frustrated by reasons other than the breach of the Agreement by a party, then the City shall require the

Owner to refund, reimburse or repay to the City any portion of the Chapter 380 Payments that the City may be ordered to refund, reimburse or repay to the State or that may be ordered offset or withheld from future City revenues.

9.1.5 Either Party may terminate this Agreement effective immediately or at any future date if the third party operating the Village Center Development elects to cease operation or otherwise changes its operations for any reason whatsoever whereby no local Sales and Use Taxes are thereafter generated. Termination of this Agreement under this subsection of the Agreement shall render this Agreement null and void from that point forward with each Party having no further rights against each other under this Agreement or at law provided, however, save and except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of Chapter 380 Payments from City to Owner, and including the obligation for repayment of Chapter 380 Payments by Owner to City.

9.1.6 Act of Default. Any other Act of Default hereunder

9.2 Effect of Termination. This Agreement will terminate in its entirety if Owner does not fulfill the requirements of Section 4.1.1 hereto.

9.3 Contingent on Master Development Agreement. This Agreement is contingent upon the subsequent approval and execution of a Master Development Agreement by and between the City and the Owner or the Owner's designee for Village Center. The Owner shall present a proposed Master Development Agreement to the City for approval, and the City shall not unreasonably withhold such approval. If no Master Development Agreement is presented to the City by the Owner following the execution of this Agreement by the Parties, or if the City reasonably withholds its approval of the Master Development Agreement, then this Agreement shall terminate and the City and the Owner shall have no obligations under this Agreement.

10.

Reporting and Monitoring

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

10.1.1 Annual Report. Owner shall provide an annual report on each anniversary date of the Effective Date certifying the status of compliance through the Term of this Agreement of all performance requirements.

10.1.2 Access to Records. Owner, during normal business hours shall allow City reasonable access to its records and books and all other relevant records related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement, but the confidentiality of such records and information shall be maintained by City unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

11.
Owner's Liability

11.1 Default. Subject to Force Majeure and any consent given under Section 11.2, should Owner fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by Owner and, if not cured and corrected within sixty (60) days after written notice to do so, City may terminate this Agreement and cease making any further Chapter 380 Payments subject to the terms of Section 9.2 hereof. Owner shall not be required to repay to City any money grants and consideration previously paid to it by City prior to such termination except as provided in Section 5.4 hereof. Owner shall not be liable to City for any alleged damages as a result of an Act of Default by Owner under this Agreement.

11.2 Consent and Excuse. In the event of unforeseeable third party delays which are not Force Majeure and upon a reasonable showing by Owner that it has immediately and in good faith commenced and is diligently and continuously pursuing the correction, removal or abatement of such delays by using its best efforts, City may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld.

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

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

12.
City's Liability Limitations

Should City fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by City and City shall have sixty (60) days to cure and remove the Default upon receipt of written notice to do so from Owner. Payments to be made to Owner shall also require a written request from Owner to be accompanied by all reasonable supporting documentation from Owner that it has fully complied with its performance requirements. City shall have thirty (30) days to make payment after receipt of such payment request with supporting documentation.

13.
Miscellaneous Provisions

13.1 Sign Permitting. Prior to submitting any building permit applications for any sign, Owner shall obtain approval from City's Planning and Building Inspection Department's Director for plans for signs.

13.2 Changes in Law. If, during the Term of this Agreement, State law applicable to Sales Tax Revenues, Ad Valorem Tax Revenues or Hotel Occupancy Tax Revenues changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to Owner under the laws in effect as of the Effective Date, then City will still be liable to pay to Owner the Chapter 380 Payments from other available sources to achieve the same economic benefits to both Parties, which would have resulted if the law had not changed.

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

13.4 Permitting. Subject to Owner's complying with all applicable laws, City agrees to cooperate with Owner to expeditiously process permits, including plat applications required for the Project.

13.5 Representations and Warranties.

13.5.1 City's Representations and Warranties to Owner. City represents and warrants to Owner that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. City represents that it is a home rule municipality exercising governmental functions and powers and is organized and existing under the State of Texas. City further represents that it is not aware of any pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement. Owner represents and warrants to City that it has the requisite authority to enter into this Agreement.

13.5.2 Owner's Representations and Warranties to City. The Owner is not relying upon any representation or warranty of the City regarding the City's power or authority to enter into this Agreement under the provisions of the Act and Chapter 380, Texas Local Government Code, or the appropriate determination of the tax situs of transactions contemplated by this Agreement. The Owner knows of no litigation, proceedings, initiative, referendum, investigation or the threat of any of the same, contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to the City. Owner represents and warrants that it is a Limited Liability Company organized and existing under and by virtue of the laws of the State of Texas and is qualified to conduct business and enter into this Agreement pursuant and by virtue of the laws of the State of Texas, and has the power and authority to carry on the business as presently conducted and as represented in this Agreement. Likewise, Owner agrees that it shall ensure that the Village Center is an entity legally existing and operating by virtue and in accordance with the laws of the State of Texas, and has the power and authority to carry out this project in the manner presented herein.

13.5.3 Master Development Agreement. City and Owner will make all reasonable efforts to enter into a Master Development Agreement relating to Village Center on or before June 17, 2019. Further, City agrees that it will not unreasonably withhold its consent to a Master Development Agreement with Owner.

13.6 Attorney's Fees. If any legal action or proceeding is commenced between City and Owner to enforce the provisions of this Agreement or to recover damages for its breach, the prevailing party in the legal action will be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

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

13.8 Assignment. Except as provided below, Owner may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of City, which approval will not be unreasonably withheld or delayed. The City agrees, however, that the Owner may assign all or part of its rights and obligations under this Agreement to any entity affiliated with the Owner by reason of controlling, being controlled by, or being under common control with the Owner; to a subsequent owner of all or any part of the Project; to a tenant in the Project or to a third party lender advancing funds for the acquisition of all or any part of the Property or for the construction or operation of the Project. The City expressly consents to any assignment described in the preceding sentence, and agrees that no further consent of City to such an assignment will be required. The Owner agrees to provide City with written notice of any such assignment.

13.9 Termination. If Owner elects not to proceed with the development of the Project as contemplated by this Agreement, Owner will notify City in writing, and this Agreement and the obligations of both parties will be deemed terminated and of no further force or effect as of the date of such notice.

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

Owner: Collaborate Development Group LLC
3302 Canal St, Suite #36
Houston, Texas 77003
Attn: Saul Valentin, Founding Principal
Phone: (832) 409-3050

with a copy to: Thomas A. Sage
Hunton Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002
Phone: (713) 220-3833

City: City of Jersey Village
16501 Jersey Drive
Jersey Village, Texas 77040
Attn: City Manager
Phone: (713) 466-2109

with a copy to: City of Jersey Village
City Attorney
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133
Phone: (713) 533-3800

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

13.11 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against any party based on draftsmanship.

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

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

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

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

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

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

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

- Exhibit A: Public Infrastructure Improvements
- Exhibit B: City Owned Property
- Exhibit C: Property Under Option to be Purchased by Owner

13.19 Variances. The City Council of City, in its sole discretion, may grant and approve variances to Owner or Operator from the Performance Criteria and Development Standards described herein upon application in writing therefor by Owner on behalf of itself or the Operator.

13.20 Waiver of Immunity. City and Owner hereby agree that this Agreement constitutes an agreement for providing professional development services to City, which is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended. City agrees that, in accordance with and by operation of such Subchapter I, it has waived sovereign immunity to suit for the purpose of adjudicating a claim for breach of this Agreement, subject to the terms and conditions of Subchapter I of Chapter 271, Texas Local Government Code, as amended.

13.20.1 Balance Owed Under the Agreement. The total amount of money awarded in an adjudication brought against City for breach of this Agreement is limited to the following: (i) the balance then due and owed by City under the Agreement plus any balance which may become due by City during the remaining term of the Agreement, including any amendments thereto; and (ii) interest as allowed by law.

13.20.2 Damages not Included. Damages awarded in an adjudication brought against City arising under the Agreement, including any amendments thereto, may not include: (i) consequential damages, except as expressly allowed under Section 13.20.1(i) above; (ii) exemplary damages; or (iii) damages for unabsorbed home office overhead.

14. **General Terms**

14.1 Entire Agreement. This Agreement embodies the complete Agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements

between the parties relating to matters in this agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.

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

14.3 **Confidential.** City, its officers and employees, and its agents or contractors retained to perform economic development services for City, shall treat as confidential the financial statements and information together with any proprietary information shared by Owner, Operator or their respective representatives with City or any representatives thereof and shall not release such information to the public, unless required by law or court order. City shall immediately notify Owner of requests or court orders to release such information.

14.4 **Exhibits.** Exhibits A through C attached hereto are made a part of this Agreement for all purposes as if they were set forth herein in their entirety.

[Remainder of page intentionally left blank]

EXECUTED to be effective as of the 27 day of June , 2019.

**COLLABORATE DEVELOPMENT, a Texas
limited liability corporation**

By: 
Printed Name: Saul Valentin
Title: Manager

Date: 6/27/2019

**CITY OF JERSEY VILLAGE, TEXAS,
a home-rule municipal corporation**


 Austin Bleess, City Manager

APPROVED AS TO FORM AND CONTENT:

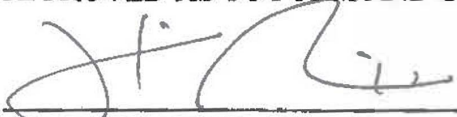

 Justin Penning City Attorney

Exhibit A

PUBLIC INFRASTRUCTURE IMPROVEMENTS

- Streets;
- Sidewalks;
- Drainage;
- Water and sewer systems;
- Wastewater collection lines;
- Green space, including parks, landscaping and irrigation;
- Street signage;
- Traffic lights;
- And any other public improvement allowable under applicable law.

Exhibit B

CITY OWNED PROPERTY

TRACT 1:

All of Restricted “F” of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 10.89 acre tract of land described as Tract I in Special Warranty Deed filed for record under Harris County Clerk’s File No. 20080357006.

TRACT 2:

All of Restricted Reserve “B” of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 2.593 acre tract of land described as Tract II and the same 6.543 acre tract of land described as Tract IV in Special Warranty Deed filed for record under Harris County Clerk’s File No. 20080357006.

TRACT 3:

All of Restricted Reserve “G” of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 3.321 acre tract of land described as Tract III in Special Warranty Deed filed for record under Harris County Clerk’s File No. 20080357006.



Exhibit B

Exhibit C

PROPERTY UNDER OPTION

All of Restricted Reserve "D" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat recorded in/under Volume 631037 of the Map Records of Harris County, Texas and being the same 5.58 acre tract of land described therein.

All of Restricted Reserve "E" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat recorded in/under Volume 631037 of the Map Records of Harris County, Texas and being the same 4.98 acre tract of land described therein.

