

CITY OF JERSEY VILLAGE, TEXAS
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (the “Agreement”) is made by and between the **CITY OF JERSEY VILLAGE, TEXAS**, a Texas home rule municipality corporation located at 16501 Jersey Drive, Jersey Village, Texas 77040 (the “City”), and **GORDON NW VILLAGE, LP**, a Texas limited partnership located at 4900 Woodway Drive #1125, Houston, Texas 77056 (the “Developer”), (each a “Party”, and collectively, the “Parties”), and is entered into as of the date of execution by the Parties.

RECITALS

WHEREAS, Chapter 380 of the Texas Local Government Code (“Chapter 380”) provides the statutory authority for the City to establish and administer a program, including the making of loans and grants of public money, to promote state and local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City Council (the “Council”) finds that the administration of a program that will make loans and grants of money available to the Developer for a limited time in amounts equal to a portion of the City’s sales tax related to certain property (the “Program”) would promote local economic development and stimulate business and commercial activity within the City; and

WHEREAS, the Developer will locate a retail sales center (the “Retail Sales Center”) in the City and has applied for financial assistance under the Program to locate the Retail Sales Center in the City; and

WHEREAS, the Parties desire to enter into this Agreement pursuant to Chapter 380 in order to provide loans and grants of money in accordance therein and with required controls; and

WHEREAS, the Council finds that this Agreement contains sufficient controls to ensure that the Program is carried out according to all applicable laws; and

NOW THEREFORE, for and in consideration of the provisions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree as follows:

AGREEMENT

SECTION 1. RECITALS INCORPORATED.

The foregoing Recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the Parties.

SECTION 2. TERM.

This Agreement shall commence as of the Effective Date and shall continue in effect until the tenth (10th) anniversary of the date that the Retail Sales Center first has Sales and Use Tax allocable to the City, unless terminated sooner under the provisions herein (the “Term”).

SECTION 3. DEFINITIONS.

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

- (a) Crime Control Revenue means the sales and use tax revenue, at the rate of one-half of one percent (0.50%), generated for use by the City.
- (b) Effective Date means the date of execution of this Agreement by the Parties.
- (c) Employment Positions means jobs at the location of the Retail Sales Center that provide a minimum of two thousand (2,000) hours of paid time averaged over a twelve (12) month period, are consistent with the Texas Workforce Commission records, and relate to the operation of the Retail Sales Center.
- (d) Incentive Period means the period of time beginning on the date that Retail Sales Center first has Sales and Use Tax allocable to the City and continuing through the Term.
- (e) Program Grant means the economic development grant paid by the City to the Developer as a reimbursement of certain Sales and Use Taxes generated by the Retail Sales Center in accordance with this Agreement. The Program Grant shall be based upon reports filed by the entity occupying the Retail Sales Center with the Comptroller's office. The Program Grant shall be confirmed by the report provided by the Comptroller to the City for the Retail Sales Center and will be based on amounts of Sales and Use Taxes actually paid by the Comptroller's office to the City.
- (f) Retail Sales Center means the land and improvements of 17380-17396 Northwest Freeway, Jersey Village, Texas, including a minimum thirty-five thousand square feet (35,000 sq. ft.) commercial structure to be constructed and operated by the Developer as provided on the site plan attached hereto as "Exhibit A" and incorporated herein by reference. The entities occupying or doing business at the Retail Sales Center shall be limited to those types of entities and businesses approved by the Council and shall expressly exclude those listed in "Exhibit A".
- (g) Sales and Use Tax means the amount of money equivalent to the City's municipal sales and use tax, levied at the rate of one and one-half percent (1.5%), pursuant to Section 321.103 of the Texas Tax Code, and actually received from the Comptroller. The City's Sales and Use Tax is separate and distinct from, and does not include, the Crime Control Revenue.
- (h) Comptroller means the Office of the Texas Comptroller of Public Accounts, or its designee.

SECTION 4. OBLIGATIONS OF THE DEVELOPER.

Throughout the Term the Developer hereby agrees that it shall comply with the following:

- (a) Location of the Retail Sales Center. The Retail Sales Center shall be located and constructed to substantial completion at 17380-17396 Northwest Freeway, Jersey Village, Texas no later than one (1) year from the Effective Date.
- (b) Commencement of Operation and Operation of the Retail Sales Center. The commencement of operation of the Retail Sales Center shall be considered to have occurred for purposes of this Agreement upon the generation of Sales and Use Tax allocable to City by the Retail Sales

Center, with such commencement of operations occurring within one (1) year of the substantial completion of the Retail Sales Center, and the Retail Sales Center shall be continuously operated as a Retail Sales Center thereafter.

(c) Standard and Place of Operation of the Retail Sales Center. The Developer shall be responsible for ensuring that the Retail Sales Center is operated in accordance with this Agreement and with all applicable rules, laws, and regulations, including the City's land use requirements, such as procurement of certificates of occupancy, compliance with applicable standard building codes, etc., and that during the Incentive Period, the Developer will ensure that the Retail Sales Center maintains in the City a "place of business of the retailer" as defined in Section 321.002(a)(3)(A) Texas Tax Code, and consummates sales in the City pursuant to Section 321.203 Texas Tax Code and in accordance with all related applicable laws.

(d) Job Creation. By January 1, 2021 and thereafter for the remainder of the Term, the Retail Sales Center will employ a minimum of five (5) Employment Positions.

(e) Reporting of Sales and Use Tax. The Developer will provide to the City, on a monthly basis, a copy of the financial report that is being submitted to the Comptroller relating to the remission of Sales and Use Tax collected in the City as a result of the operation of the Retail Sales Center (the "Sales Tax Report"), and the Developer will obtain third party consent for the Comptroller's office to release the monthly reported figures along with any State audit adjustments to the City, which the City hereby agrees to keep "Confidential" consistent with the Texas Tax Code and to the extent allowed by law.

(f) Reporting of Audits. The Developer shall notify the City of any Sales and Use Tax audit conducted or being conducted regarding the Retail Sales Center by the Comptroller, with such notice being made as soon as practicable, but not later than sixty (60) days after the audit.

(g) Payment of Ad Valorem Taxes. The ad valorem taxes levied against all or any portion of the Retail Sales Center shall be paid when due, unless such ad valorem taxes are under protest in accordance with Texas law, and that any ad valorem taxes levied against any portion of the Retail Sales Center which are not under protest shall be paid when due.

(h) Performance and Compliance. The Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Parties related to the Retail Sales Center.

(i) Annual Certification. Beginning March 15, 2021, in order to be eligible to receive a Program Grant, the Developer shall annually certify the following information for the then current year and for each subsequent year of the Term:

- (1) The location of the Retail Sales Center;
- (2) The dates of operation of the Retail Sales Center;
- (3) That it is and has been compliant with Section 4(c) for the previous year;
- (4) The total number of Employment Positions at the Retail Sales Center and the number of Employment Positions for the previous year;

- (5) The total amount of the Retail Sales Center's previous year's Sales and Use Tax revenue;
- (6) The status of the payment of ad valorem taxes for the previous year for the Retail Sales Center, including any delinquencies or contested amounts from any prior year; and
- (7) The status of any Sales and Use Tax audit being conducted by the Comptroller regarding the Retail Sales Center for the previous year.

SECTION 5. OBLIGATIONS OF THE CITY.

Throughout the Term the City hereby agrees that it shall comply with the following:

(a) Program Grant. The City shall make reimbursement payments to the Developer using the following schedule:

(1) For each calendar year during the Incentive Period, the City will provide a seventy-five percent (75%) refund payment to the Developer of the City's Sales and Use Tax generated by and attributable to the Retail Sales Center only after the City has received one hundred thousand dollars (\$100,000) of Sales and Use Tax from the Comptroller that has been generated by and attributable to the Retail Sales Center. The following Examples illustrate how the Program Grant is calculated using three different model scenarios:

(A) Example 1: If the taxable sales generated by and attributable to the Retail Sales Center were ten million dollars (\$10,000,000) for a calendar year during the Incentive Period, then the Sales and Use Tax Revenue would be one hundred fifty thousand dollars (\$150,000), in which case the City would refund the Developer thirty-seven thousand five hundred dollars (\$37,500) of the Sales and Use Tax Revenue for that calendar year.

(B) Example 2: If the taxable sales generated by and attributable to the Retail Sales Center were fifteen million dollars (\$15,000,000) for a calendar year during the Incentive Period, then the Sales and Use Tax revenue would be two hundred twenty-five thousand dollars (\$225,000), in which case the City would refund the Developer ninety-three thousand seven hundred fifty dollars (\$93,750) of the Sales and Use Tax Revenue for that calendar year.

(C) Example 3: If the taxable sales generated by and attributable to the Retail Sales Center were six million six hundred sixty-six thousand six hundred sixty-seven dollars (\$6,666,667) for a calendar year during the Incentive Period, then the Sales and Use Tax revenue would be one hundred thousand dollars (\$100,000), in which case the City would not provide a refund to the Developer because there would be no revenue generated by the Retail Sales Center over one hundred thousand dollars (\$100,000) for that calendar year.

(2) During the Term, the cumulative amount of all reimbursements paid by the City to the Developer of Program Grants, pursuant to Section 5(a)(1) above, shall not exceed two hundred fifty thousand dollars (\$250,000). If the cumulative reimbursements to the Developer of Program Grants should exceed two hundred fifty thousand dollars (\$250,000) at any time during the Term, then this Agreement shall terminate and the Parties shall have no further obligations to each other except as provided herein.

(b) Time of Payments. The formula set forth above for calculation of the Program Grant will be based on the annual amount of net Sales and Use Tax revenue generated by and attributable to the Retail Sales Center and specifically excludes the City's Crime Control Revenue and any

collection fee that may be imposed by the Comptroller, and shall only be that net revenue actually paid by the Comptroller to the City. The reimbursement payment of the Program Grant will be made annually by the City to the Developer and will be due within thirty (30) days following the receipt by the City of:

(1) the Sales Tax Report specified in Section 4(e) of this Agreement for each month of the applicable year; and

(2) the City's share of the Sales and Use Tax revenue from the Comptroller's office for the applicable year.

(c) True-up. Notwithstanding anything contained in this Agreement to the contrary, the Parties' intent is for Program Grant to be made annually to the Developer, subject to a true-up calculation that shall ensure any annual performance metrics are met and to reconcile annual Program Grant payments as set forth herein. As a part of this true-up calculation, the Developer will summarize the taxable sales generated by the Retail Sales Center for each calendar year during the Incentive Period and provide such summary to the City to ensure that the Program Grant has been properly calculated based on this Section 5. If the true-up calculation shows that the City has overpaid or underpaid the Developer, then the City will adjust any subsequent Program Grant to make up for such over- or under-payment. The true-up calculations will be made within three (3) months of the end of the applicable calendar year.

(d) Adjustments. Any adjustment made by the Comptroller in its payment to the City to correct prior overages or underages, and which amount affects the calculation of the Program Grant, shall oblige the City to adjust any future Program Grant due to the Developer in order to reflect such adjustment.

(e) Performance. The City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Parties related to the Retail Sales Center.

(f) Notification of Dispute. If the Comptroller determines that the Sales and Use Tax included in one (1) or more Sales Tax Reports provided to the City by the Developer exceeds the amount of the Sales and Use Tax that should have been generated by and attributable to the Retail Sales Center and included on such Sales Tax Report (the "Disputed Amount"), then the City shall not be required to pay the Developer on such Disputed Amount while the dispute is being resolved.

SECTION 6. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(a) Locate a Retail Sales Center. Failure of the Developer to locate a Retail Sales Center within the City consistent with this Agreement.

(b) Operate a Retail Sales Center. Failure of the Developer to operate a Retail Sales Center consistent with this Agreement.

(c) Job Creation. Failure of the Developer to cause to be employed a minimum of five (5) Employment Positions at the Retail Sales Center consistent with this Agreement.

(d) Reporting of Sales and Use Taxes, or audit. Failure of the Developer to ensure the reporting of Sales and Use Taxes and of an audit consistent with this Agreement.

(e) Payment of Ad Valorem Taxes. Failure of the Developer to ensure payment of all ad valorem taxes on the Retail Sales Center consistent with this Agreement.

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

(g) Failure to Make Program Grant Payments. Failure of the City to pay the Program Grant in accordance with this Agreement.

(h) Other Defaults. Failure of either Party to comply with or to perform any other term, obligation, covenant, or condition contained in this Agreement or in any related documents.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

(a) General Defaults. In the event of default under subsections 6(a) and 6(c)-6(h) of this Agreement, the non-defaulting Party shall give written notice to the defaulting Party of any default, and the defaulting Party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting Party is not otherwise in default, the non-defaulting Party shall have the right to immediately terminate this Agreement upon written notice to the defaulting Party. The sole and exclusive remedies of the non-defaulting Party shall be limited to either termination of this Agreement or a suit for specific performance.

(b) Section 6(b) Default. In the event of default under Section 6(b) occurs and the Developer fails to cure such event of default within one (1) year after written notice by the City to the Developer, this Agreement shall terminate automatically without additional notice of any kind, and the City shall be able to pursue any remedy for such default available to it by law or equity.

SECTION 8. TERMINATION OF AGREEMENT WITHOUT DEFAULT.

(a) Either Party may immediately terminate this Agreement without an event of default if:

(1) 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 agreement rebating municipal sales and use taxes is an unconstitutional debt; or,

(2) the federal government implements a streamlined sales and use tax or similar legislation in such a manner as to change the consummation of a sales and use tax event to a tax situs outside of the City, thereby eliminating the City's rights in the sales tax proceeds paid by the operator of the Retail Sales Center.

Termination of this Agreement under this subsection shall render this Agreement null and void from that point forward with each Party having no further rights against each other, save and

except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of a Program Grant from the City to the Developer, and including the obligation for repayment of a Program Grant by the Developer to the City.

(b) The Developer may terminate this Agreement effective immediately or at any future date upon written notice to the City if the Developer elects to cease operation of the Retail Sales Center in the City or otherwise changes such operations for any reason whatsoever whereby no local Sales and Use Taxes are thereafter generated. Termination of this Agreement under this subsection 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, save and except those rights and obligations accruing on the part of either Party prior to such termination including the repayment of a Program Grant by the Developer to the City.

(c) This Agreement will terminate as to both Parties if the cumulative Program Grant payment made to the Developer by the City during the Term shall ever exceed two hundred fifty thousand dollars (\$250,000). Termination of this Agreement under this subsection 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, save and except those rights and obligations accruing on the part of either Party prior to such termination including the repayment of a Program Grant by the Developer to the City.

SECTION 9. REPRESENTATIONS AND WARRANTIES.

(a) The Developer represents and warrants to the City that as of the Effective Date:

(1) Except as set forth in Section 9(b), the Developer 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 Chapter 380, or the appropriate determination of the tax situs of transactions contemplated by this Agreement; and

(2) The Developer is a limited partnership 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.

(b) The City represents and warrants to the Developer that as of the Effective Date:

(1) The City is a State of Texas home rule municipal corporation exercising governmental functions and powers and is organized and existing under the State of Texas and has taken all actions required by law to approve the execution of this Agreement; and

(2) The City has the legal right, power, and authority to enter this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery, and performance of this Agreement has been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery, and performance of this Agreement, except as otherwise expressly set forth herein; and

(3) The City is not aware of any pending lawsuits, actions, or proceedings which would prevent or impair the timely performance of the City's obligations under this Agreement.

SECTION 10. MISCELLANEOUS PROVISIONS.

(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 Parties.

(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 Harris County, Texas. Venue for any action arising under this Agreement shall lie in the State district courts of Harris County, Texas.

(c) Assignment. This Agreement may not be assigned without the written consent of the Parties.

(d) Binding Obligation. This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on the City’s behalf has full authority to execute this Agreement and binds the City to the same. The Developer warrants and represents that the individual executing this Agreement on the Developer’s behalf has full authority to execute this Agreement and binds the Developer to the same.

(e) Caption Headings. The caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which shall constitute the same document.

(g) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, then 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. Any notice or other communication required or permitted by this Agreement (the “Notice”) is effective when in writing and:

(1) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand; or,

(2) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

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| For the Developer: Gordon NW Village, LP Attn: Gary Phillips 4900 Woodway Drive #1125, Houston, Texas 77056 | For the City: The City of Jersey Village Attn: City Manager 16501 Jersey Drive Jersey Village, Texas 77040 |
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(i) Record Retention and Accessibility of Records. The Developer shall maintain and make available to the City upon request all records and supporting documentation relating to the performance of this Agreement, including all Sales and Use Tax revenue information relating to

the Retail Sales Center, operation of the Retail Sales Center, Employment Positions, ad valorem payments and contests, and other matters relating to performance under this Agreement. The Developer shall retain such records, and any supporting documentation for the greater of: five (5) years from the end of the Term; or, the period required by applicable law.

(j) Severability. The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, then the remaining portions of this Agreement shall be enforced as if the invalid provision had never been included to the extent it does not frustrate the intent of this Agreement.

(k) Time is of the Essence. Time is of the essence in the performance of this Agreement.

(l) Undocumented Workers. The Developer certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended.

(m) Boycott Prohibition. The Developer must provide a written verification that it does not boycott Israel, and that it will not boycott Israel during the Term.

(n) Public Information. Notwithstanding any other provision herein, this Agreement may be public information. To the extent, if any, that any provision of this Agreement is in conflict with the Texas Public Information Act, then the Texas Public Information Act shall prevail.

SIGNATURES

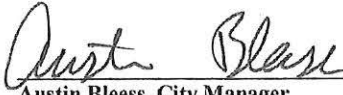
The Parties hereby enter into this Agreement as of the date of their signatures provided below.

FOR THE DEVELOPER:

FOR THE CITY:



Scott A. Gordon, Manager
Gordon NW Village GP, LLC, General Partner



Austin Bleess, City Manager

January 21, 2020
Date

January 21, 2020
Date

ACKNOWLEDGEMENT

For the Developer

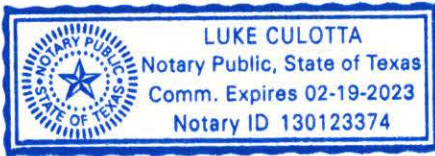
State of Texas §
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County of Harris §

This instrument was acknowledged before me on the 21st day of January, 2020 by Scott A. Gordon, Manager of Gordon NW Village GP, LLC, a Texas limited liability company, General Partner of GORDON NW VILLAGE, LP, a Texas limited partnership.

[Seal]



Notary Public, State of Texas

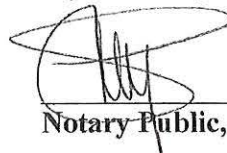


For the City

State of Texas §
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County of Harris §

This instrument was acknowledged before me on the 21st day of January, 2020, by Austin Bless, City Manager of the City of Jersey Village, a Texas home-rule municipality.

[Seal]



Notary Public, State of Texas

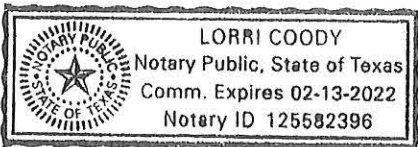


EXHIBIT A: RETAIL SALES CENTER – SITE PLAN

The City shall not make any reimbursement payments to the Developer for sales from a retail business selling CBD products, Vape products, or sexual oriented retail clothing store, or similar.

DEPICTION OF PREMISES

