

**CITY OF JERSEY VILLAGE, TEXAS  
AND  
SOUTHWEST DEVELOPERS, LLC**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AGREEMENT**

This **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into by and between the **CITY OF JERSEY VILLAGE, TEXAS**, a Texas home rule municipality (hereinafter referred to as “City”), and **SOUTHWEST DEVELOPERS, LLC**, a Georgia limited liability company (hereinafter referred to as “Developer”), for the purposes and considerations stated below. City and Developer are referred to collectively as the “Parties.”

**WHEREAS**, the City finds that the administration of a program of grants including to Developer for a limited time in amounts equal to a portion of City sales tax relating to certain property hereinafter referred to as Program, would promote local economic development and stimulate business and commercial activity within the City and would directly establish a public purpose; and

**WHEREAS**, the City has determined that the said Program contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the Program; and

**WHEREAS**, Chapter 380 Texas Local Government Code provides statutory authority establishing and administering the said Program, including making loans and grants of money (“Chapter 380”); and

**WHEREAS**, Developer will provide development services for City including finding a suitable third party to locate a retail sales center (“Retail Sales Center”) in the City and assistance with identifying a location for the Retail Sales Center, and has applied to City under its Program for financial assistance to locate such Retail Sales Center in the City; and

**WHEREAS**, the Developer and the City desire to enter into this Agreement pursuant to Chapter 380 providing loans and/or grants of money in accordance therein and with required controls; and

**WHEREAS**, the City determines that entering into this Agreement serves the public purpose of promoting local economic development, and enhances business and commercial activity within the City;

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

**SECTION 1. FINDINGS 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 hereof and shall continue in effect until **December 31, 2030**, unless terminated sooner under the provisions hereof. This Agreement may be extended by mutual consent in writing by the Parties for one additional five year period.

**SECTION 3. DEFINITIONS.**

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

- (a) **Agreement.** The word “Agreement” means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (b) **City.** The word “City” means the City of Jersey Village, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 16501 Jersey Drive, Jersey Village, Texas 77040.
- (c) **Crime Control Revenue.** The words “Crime Control Revenue” mean the sales and use tax revenue, at the rate of one-half of one percent (0.50%) percent, generated for use by the City.
- (d) **Developer.** The word “Developer” means Southwest Developers, LLC, a Georgia limited liability company, its successors and assigns, whose address for the purposes of this Agreement is 3475 Lenox Road, Suite 650, Atlanta, Georgia 30326.
- (e) **Employment Positions.** The words “Employment Position” or “Employment Positions” mean and include the creation of new additional 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 and consistent with the Texas Workforce Commission records and which positions relate to the operation of the Retail Sales Center.

- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (g) **Incentive Period.** The Incentive Period commences as of the date that Retail Sales Center first has Sales and Use Tax allocable to the City and ends with the Term of this Agreement.
- (h) **Program Grant or Program Grant Payment.** The words “Program Grant” or “Program Grant Payment” mean the economic development grants paid by the City to Developer in accordance with this Agreement, computed as a percentage of Sales and Use Taxes generated by the Retail Sales Center as further set forth in this Agreement. The Program Grant Payment shall be based upon reports filed by the entity occupying the Retail Sales Center with the Texas State Comptroller’s office. The Program Grant Payment shall be confirmed by the report provided by the Texas State Comptroller to the City for the Retail Sales Center and will be based on amounts of Sales and Use Taxes actually paid by the Texas State Comptroller’s office to City.
- (i) **Property.** The word “Property” shall mean the location of the Retail Sales Center.
- (j) **Retail Sales Center.** The words “Retail Sales Center” means a minimum 15,000 square feet of space located in the City operated by a third party pursuant to an agreement entered into between Developer and such third party to operate same.
- (k) **Sales and Use Tax.** The words “Sales and Use Tax” or “Sales and Use Taxes” mean 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. For clarity, the City’s one and one-half percent (1.5%) Sales and Use Tax revenue herein is separate and distinct from the one-half of one percent (0.50%) Crime Control Revenue.
- (l) **Texas State Comptroller or Comptroller.** The words “Texas State Comptroller” or “Comptroller” mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

**SECTION 4. OBLIGATIONS OF DEVELOPER.**

Developer covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Location of Retail Sales Center.** Developer covenants and agrees that the Retail Sales Center shall be located on Property located within the City by one year from the Effective Date. Developer must provide the location of the Property to City within 10 days of

securing same. Developer may change the location of the Retail Sales Center upon written notification to the City.

- (b) **Commencement of Operation and Operation of Retail Sales Center.** Operation of the Retail Sales Center shall commence within one year from the Effective Date and shall be continuously operated as a Retail Sales Center thereafter throughout the term of this Agreement. 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.
- (c) **Standard and Place of Operation.** 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.

Developer will ensure that the Retail Sales Center maintain in the City a place of business as defined in Section 321.002(a)(3) Texas Tax Code, and that there are a consummation of sales as determined pursuant to Section 321.203 Texas Tax Code and in accordance with all related applicable rules and regulations as may from time to time be amended.

- (d) **Job Creation.** Developer covenants and agrees that by March 31, 2016, and during the term of this Agreement the Retail Sales Center will employ a minimum of fifteen (15) Employment Positions.
- (e) **Reporting of Sales and Use Taxes.** Developer will provide City, on a monthly basis, a copy of the financial report that is being submitted to the Texas State Comptroller relating to the remission of sales and use taxes collected in the City as a result of the operation of the Retail Sales Center ("Sales Tax Report"). Additionally, Developer will obtain third party's consent for the Texas State Comptroller's office to release the monthly reported figures along with any State audit adjustments to the City.

City hereby agrees to keep this information "Confidential" consistent with the Texas Tax Code, including, without limitation, Section 151.027 and to the extent allowed by law.

- (f) **Reporting of Audits.** The Developer shall notify the City of any audit conducted or being conducted regarding the Retail Sales 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 in accordance with Section 5. Such notification shall be made as soon as practicable, but in no event later than sixty (60) days after the audit.

- (g) **Payment of Ad Valorem Taxes.** All ad valorem taxes shall be paid by January 31 of each tax year on the Retail Sales 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.
- (h) **Performance/Annual Certification.** 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 Developer and City, and any related agreements between Developer and City.

In order to be eligible to receive Program Grant Payments, Developer shall have annually certified commencing March 15, 2016 the following:

- i. The current location of the Retail Sales Center as well as for the previous year.
- ii. The dates of operation of the Retail Sales Center for the previous year.
- iii. That it currently is and has been compliant with the standard of operation set forth in Section 4(c) above for the previous year.
- iv. The total number of employees at the Property working at the Retail Sales Center and the number of Employment Positions for the previous year.
- v. The total amount of Sales and Use Tax relating to the Property for the previous year.
- vi. The status of the payment of ad valorem taxes for the previous year for the Property, including any delinquencies or contested amounts from any prior year.
- vii. The status of any audit being conducted by the Texas State Comptroller for the previous year.

## **SECTION 5. OBLIGATIONS OF CITY.**

City covenants and agrees with the Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Program Grant Payment.** The City agrees to make payments to Developer using the following schedule:
  - (1) For months one (1) through sixty (60) of the Incentive Period, the City will pay Developer an amount of money equal to eighty-five percent 85% of the City's one and one-half percent (1.5%) Sales and Use Tax revenue generated by and attributable to the Retail Sales Center constituting Sales and Use Tax; **SAVE AND EXCEPT AS FOLLOWS:**

If the City's one and one-half percent (1.5%) Sales and Use Tax Revenue and one-half percent (0.5%) Crime Control Revenue generated by and attributable to the Retail Sales Center exceed three million dollars (\$3,000,000) (the equivalent of one hundred fifty million dollars (\$150,000,000) in taxable sales) during each twelve (12) month period beginning with the effective date of the Incentive Period, the City will reduce its payment to Developer in an amount that equals such excess amount of Sales and Use Tax Revenue attributable to taxable sales exceeding one hundred fifty million dollars (\$150,000,000) to eighty percent (80%) of the Sales and Use Tax Revenue. For clarity, months one through twelve constitute the first twelve (12) month period, and months thirteen through twenty-four constitute the second twelve (12) month period, etc.

For example, if the taxable sales generated by and attributable to the Retail Sales Center are \$170,000,000 for the second 12-month period of the Incentive Period, the Sales and Use Tax Revenue would be \$2,550,000 for such 12-month period. City would pay Developer an amount equal to 85% of the Sales and Use Tax Revenue attributable to the first \$150,000,000 (i.e., \$1,912,500), and 80% of the Sales and Use Tax Revenue attributable to the remaining \$20,000,000 of taxable sales. Thus, the total Program Grant Payment to Developer for such calendar year would be \$2,152,500 (i.e.,  $(0.85 \times \$2,250,000) + (0.8 \times \$300,000)$ ).

- (2) For months sixty-one (61) through one-hundred twenty (120) of the Incentive Period, the City will pay Developer an amount equal to eighty percent (80%) of the City's one and one-half percent (1.50%) Sales and Use Tax revenue generated by and attributable to the Retail Sales Center constituting Sales and Use Tax ; **SAVE AND EXCEPT AS FOLLOWS:**

If the City's one and one-half percent (1.5%) Sales and Use Tax Revenue and one-half percent (0.5%) Crime Control Revenue generated by and attributable to the Retail Sales Center exceed three million dollars (\$3,000,000) (the equivalent of one hundred fifty million dollars (\$150,000,000) in taxable sales) during each twelve (12) month period beginning with the sixty-first month, the City will reduce its payment to Developer by an amount equal to such excess amount of Sales and Use Tax Revenue attributable to taxable sales exceeding one hundred fifty million dollars (\$150,000,000) to seventy-seven and one-half percent (77.5%) of the Sales and Use Tax Revenue. For clarity, months sixty-one through seventy-two constitute the sixth twelve (12) month period, and months seventy-three through eighty-four constitute the seventh twelve (12) month period, etc.

For example, if the taxable sales generated by and attributable to the Retail Sales Center are \$180,000,000 for months sixty-one (61) through seventy-two (72) of the Incentive Period, the Sales and Use Tax Revenue would be \$2,700,000 for such

twelve month period. City would pay Developer an amount equal to 80% of the Sales and Use Tax Revenue attributable to the first \$150,000,000 or \$1,800,000, and 77.5% of the Sales and Use Tax Revenue attributable to the remaining \$30,000,000 of taxable sales. Thus, the total Program Grant Payment to Developer for such twelve month period would be \$2,148,750 (i.e.,  $(0.80 \times \$2,250,000) + (0.775 \times \$450,000)$ ).

- (3) For months one-hundred twenty-one (121) through the end of the Incentive Period, the City will pay Developer an amount equal to seventy-five percent (75%) of the City's one and one-half percent (1.50%) Sales and Use Tax revenue generated by and attributable to the Retail Sales Center constituting Sales and Use Tax.
- (b) **City Minimum.** For any twelve (12) month period during the Incentive Period, the City will be guaranteed that the Sales and Use Tax revenue generated by and attributable to the Retail Sales Center, after subtracting out Program Grant Payments, will be at least one hundred thousand dollars (\$100,000) (the "City Minimum"). For example, if the City's net proceeds for the second twelve (12) months of the Incentive Period is \$80,000, the Developer agrees that the City is entitled to withhold \$20,000 from the next scheduled payment in order to make up the shortfall from the previous quarter consistent with the True-up process described in Section 5(d).
- (c) **Time of Payments.** The formula set forth above for calculation of Program Grant Payments will be based on the amount of net Sales and Use Tax revenue and specifically excludes any collection fee that may be imposed by the Texas State Comptroller and shall only be that net revenue actually paid by the Comptroller's office to City. Payment will be made quarterly 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 quarter; and (2) the City's share of the Sales and Use Tax revenue from the Texas State Comptroller's office for the applicable quarter.
- (d) **True-up.** Notwithstanding anything contained in this Agreement to the contrary, the Parties' intent is for Program Grant Payments to be made each quarter to Developer, subject to a true up calculation to ensure any annual performance metrics are met and to reconcile annual Program Grant Payments as set forth in this Section 5. As part of this true up calculation, Developer will summarize the taxable sales generated by the Retail Sales Center for each 12 month period during the term and provide such summary to City to ensure that the Program Grant Payments have been properly calculated based on this Section 5. If the true up calculation shows that the City has over or underpaid Developer, City will adjust subsequent Program Grant Payments to make up for such difference. The true up calculations will be made within three months of the end of the applicable 12 month period.

- (e) **Adjustments.** Adjustments made by the Texas State Comptroller in payments to the City to correct prior overages or underage and which amount affects calculation of the Program Grant Payments shall oblige the City to adjust future Program Grant Payments due accordingly to reflect such adjustment or adjustments as the case may be.
- (f) **Performance.** 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 City and Developer, and any related agreements between City and Developer.
- (g) **Notification of Dispute.** If the Texas State Comptroller determines that Sales and Use Tax included in one or more Sales Tax Reports provided to City by Developer exceed the amount of Sales and Use Tax that should have been generated by and attributable to the Retail Sales Center and included on such Sales Tax Report(s) (the excess being for purposes of this Agreement a “Disputed Amount”), then the City shall not be required to pay 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 Developer to cause a Retail Sales Center to locate on Property within the City consistent with Section 4 of this Agreement.
- (b) **Operate a Retail Sales Center.** Failure of Developer to cause a third party to operate a Retail Sales Center consistent with Section 4 of this Agreement.
- (c) **Job Creation.** Failure of Developer to cause to be employed a minimum of fifteen (15) Employment Positions working at the Retail Sales Center consistent with Section 4(d) of this Agreement is an Event of Default.
- (d) **Reporting of Sales and Use Taxes, or audit.** Failure of Developer to ensure the reporting Sales and Use Taxes and of an audit consistent with Section 4(e) or 4(f) of this Agreement is an Event of Default.
- (e) **Payment of Ad Valorem Taxes.** All ad valorem taxes shall be paid by January 31 of each tax year on the Retail Sales Center, unless being protested in accordance with Texas law consistent with Section 4(g) of this Agreement.
- (f) **Insolvency.** The dissolution or termination of Developer’s or the legal entity which owns Retail Sales Center’s existence as a going business or concern; Developer’s or the legal entity that owns Retail Sales Center’s insolvency, appointment of receiver for any part of Developer’s or the legal entity that owns Retail Sales Center’s property; any assignment of



all or substantially all of the assets of Developer or of the legal entity that owns Retail Sales Center for the benefit of creditors of Developer or the legal entity that owns Retail Sales Center; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer or the legal entity that owns Retail Sales Center 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 City to make quarterly Program Grant Payments in accordance with this Agreement.
- (h) **Other Defaults.** Failure of Developer or City 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.** Except as set forth in subsection (b) below, in the event of default under subsections 6(a)-6(g) 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. In the event the City terminates this Agreement as a result of the foregoing, the Program Grant Payment will be immediately abolished. Additionally, Developer will owe City an amount equal to the greater of (i) the amount of Sales and Use Tax retained by the City after payment of Program Grant Payments (the "Net City Retention") for the entire twelve months prior to termination, or (ii) an amount equal to the City Minimum for such prior twelve month period, plus interest at the rate of the prime rate plus two percent (2%) per annum whichever is greater. Furthermore, no Program Grant Payment shall accrue for all tax years thereafter. Developer shall pay such funds to City within sixty (60) days of termination. The preceding remedy shall be the sole and exclusive remedy for the City in the event of any default by Developer, except as set out in Section 7(b) below. Developer's sole and exclusive remedies shall be limited to either termination of this Agreement or a suit for specific performance.
- (b) **Section 6(a) or 6(b) Default.** In the event of default under Section 6(a) or 6(b) during the first year this Agreement is in effect due to vacancy of the Retail Sales Center by a third party under contract with Developer, and Developer fails to cure such vacancy within one (1) year after written notice by City to Developer, this Agreement shall terminate automatically without additional notice of any kind.

## **SECTION 8. TERMINATION OF AGREEMENT WITHOUT DEFAULT.**

- (a) 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 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 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 Program Grant Payments from City to Developer, and including the obligation for repayment of Program Grant Payments by Developer 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 Developer to refund, reimburse or repay to the City any portion of the Program Grant Payment 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.

- (b) Either Party may terminate this Agreement effective immediately or at any future date if the third party operating the Retail Sales Center 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 Program Grant Payments from City to Developer, and including the obligation for repayment of Program Grant Payments by Developer to City.

**SECTION 9. REPRESENTATIONS AND WARRANTIES.**

- (a) Developer represents and warrants to City that to Developer's actual current knowledge as of the Effective Date:
- (i) 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 the Act and Chapter 380, Texas Local Government Code, or the appropriate determination of the tax situs of transactions contemplated by this Agreement.
  - (ii) The Developer 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.
  - (iii) Developer represents and warrants that it is a limited liability company organized and existing under and by virtue of the laws of the State of Georgia 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, Developer agrees that it shall ensure that the Retail Sales 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.
- (b) City represents and warrants to Developer that to City's actual current knowledge as of the Effective Date:
- (i) City is a home rule municipality 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.
  - (ii) 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 City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.
  - (iii) City 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.

## SECTION 10. 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 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 express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer warrants and represents that the individual executing this Agreement on Developer's behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** 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 or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be the date of the later to approve this Agreement by Developer and City.
- (h) **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.

- (i) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the “Notice”) is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

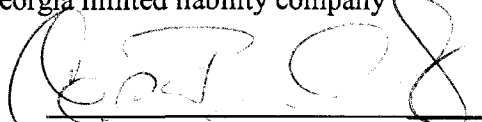
if to Developer: Southwest Developers, LLC  
Attn: Charles F. Barnwell, Jr.  
3475 Lenox Road, Suite 650  
Atlanta, Georgia 30326

if to City: The City of Jersey Village  
Attn: City Manager  
16501 Jersey Drive.  
Jersey Village, Texas 77040

- (j) **Record Retention and Accessibility of Records.** Developer shall maintain and make available to 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 Property, operation of the Retail Sales Center, Employment Positions, ad valorem payments and contests, and other matters relating to performance under this Agreement. Developer shall retain such records, and any supporting documentation for the greater of (1) five (5) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.
- (k) **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 have the force and effect of the law, the remaining portions of the 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.
- (l) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (m) **Undocumented Workers.** Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay all Program Grant Payments under this Agreement plus interest, at the rate of the prime rate plus two percent (2%) per annum, not later than the 120th day after the date the City notifies Developer of the violation.

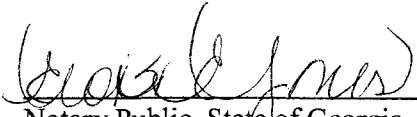
**DEVELOPER:**

***SOUTHWEST DEVELOPERS, LLC,***  
a Georgia limited liability company

By:   
Name: Charles F. Barnwell, Jr.  
Title: Manager  
Date: 6/5/2015

STATE OF GEORGIA §  
  §  
COUNTY OF FULTON §

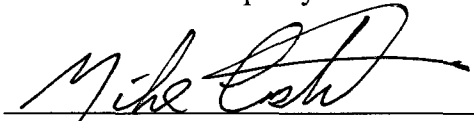
This instrument was acknowledged before me on the 5<sup>th</sup> day of June, 2015,  
by Charles F. Barnwell, Jr., manager of Southwest Developers, LLC, a Georgia limited liability  
company.

  
Notary Public, State of Georgia



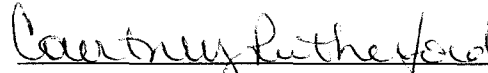
**CITY:**

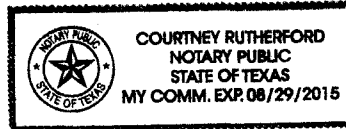
***CITY OF JERSEY VILLAGE,***  
a Texas home-rule municipality


By:   
Name: Mike Castro, PhD  
Title: City Manager  
Date: June 2, 2015

**STATE OF TEXAS**       §  
                                     §  
**COUNTY OF HARRIS**   §

This instrument was acknowledged before me on the 2nd day of June, 2015, by, Mike Castro, City Manager of the City of Jersey Village, a Texas home-rule municipality.

  
Notary Public, State of Texas



**ATTEST:**  
  
Name: Lorri Coody, City Secretary

