

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

(Chapter 380 Agreement)

This Economic Development Program Agreement (“Agreement”) is made and entered into by and between the **CITY OF MANSFIELD, TEXAS**, a Texas municipal corporation (“City”) and **Cap House Mansfield, LLC**, (“Owner”), for the purposes and considerations stated below.

WITNESSETH

WHEREAS, on December 12, 2011, the City adopted Resolution No. RE-2756-11 establishing an Economic Development Program (“Program”) pursuant to Section 380.001 of the Texas Local Government Code (“Section 380.001”); and

WHEREAS, on [REDACTED], 2024, the City adopted Resolution No. RE-[REDACTED] authorizing this Agreement as part of the Program; and

WHEREAS, Owner desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council of the City of Mansfield (“City Council”) finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that Owner’s performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City; and

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

SECTION 1. AUTHORIZATION.

The City has concluded that this Agreement is authorized by Section 380.001, and is authorized by Resolution of the City Council.

SECTION 2. TERM.

This Agreement shall be effective as of _____, 2024, and shall continue thereafter until all obligations of Owner to City have been performed in full, or on May 31, 2029, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

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

- (b) **Agreement.** The word “Agreement” means this Chapter 380 Agreement, together with all exhibits and schedules attached to this 380 Agreement from time to time, if any.
- (c) **Borrower.** The word “Borrower” means *Cap House Mansfield, LLC*, and its heirs, successors or assigns whose address for the purposes of this Agreement is 310 E Broad Street, Mansfield, Texas 76063.
- (d) **Contractor.** Any company or individual utilized by Owner to perform interior remodeling of Cap House Mansfield, LLC.
- (e) **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.”
- (f) **Indebtedness.** The word “Indebtedness” means and includes without limitation all Loans, together with all other obligations, debts and liabilities of Owner to City, or any one or more of them, as well as all claims by City against Owner, or any one or more of them; whether now or hereafter existing, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated; whether Owner may be liable individually or jointly with others; whether Owner may be obligated as a guarantor, surety, or otherwise; whether recovery upon such Indebtedness may be or hereafter may become otherwise unenforceable.
- (g) **Lender.** The word “Lender” means the *CITY OF MANSFIELD*, a Texas municipal corporation, its successors and assigns, whose corporate address for purposes of this Agreement is 1200 E. Broad Street, Mansfield, Texas 76063.
- (h) **Loan.** The word “Loan” or “Loans” means and includes any and all loans and financial accommodations from City to Owner, whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described in this Agreement and described on any exhibit or schedule attached to this Agreement.
- (i) **Note.** The word “Note” means the non-interest bearing Promissory Note of even date herewith executed by and between the parties hereto in the principal amount of **Twelve Thousand Three Hundred Fifty Two and no/100 Dollars (\$12,352.00)**, or so much as shall be advanced, due upon demand and payable on or before **May 31, 2029**, a copy of which is attached hereto as *Exhibit A* of this Agreement.
- (j) **Property.** The word “Property” means the Restaurant to be constructed, reconstructed, and operated on property generally located at 310 E Broad Street, Mansfield, Texas 76063.
- (k) **Qualified Expenditures.** The words “Qualified Expenditures” shall mean those expenditures consisting of payment for interior remodeling of a Restaurant as described in *Exhibit B* of this agreement.
- (l) **Related Documents.** The words “Related Documents” mean and include without limitation all promissory notes, 380 agreements, and all other instruments and documents,

whether now or hereafter existing, executed in connection with Owner's Indebtedness to City.

SECTION 4. AFFIRMATIVE COVENANTS.

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

- (a) **Financial Assistance for Qualified Expenditures.** Owner shall be entitled to the aggregate financial assistance of **Twelve Thousand Three Hundred Fifty Two and no/100 Dollars (\$12,352.00)** for Qualified Expenditures to be made to the Property. Owner covenants and agrees to provide City invoices or receipts for Qualified Expenditures to be made to the Property in a minimum amount of **Twelve Thousand Three Hundred Fifty Two and no/100 Dollars (\$12,352.00)** by **June 30, 2024**. City, at its sole discretion, has the option to pay Contractor on behalf of Owner for Qualified Expenditures upon City's receipt of invoices or receipts under this section.
- (b) **Approval of Final Inspection.** Owner agrees to obtain an Approval of Final Inspection from the City of Mansfield, Texas, for the interior remodeling of a Restaurant located on the Property, and is open to the general public by **July 1, 2024**.
- (c) **Operate Restaurant.** Owner agrees to maintain and operate a Restaurant on the Property during the Term of this Agreement during the following days/hours:
 - Six Days per Week
 - 8 hours per Day, with Closing no earlier than 10:00PM
- (d) **Financial Assistance.** City covenants and agrees to provide Owner, or at City's sole discretion, Contractor, financial assistance in the amount of **Twelve Thousand Three Hundred Fifty Two and no/100 Dollars (\$12,352.00)** for Qualified Expenditures to be made to the Property by Owner within thirty (30) days of receipt of invoices and receipts as specified in Section 4(a) of this Agreement.
- (e) **Performance Conditions.** Owner agrees to make, execute and deliver to City such other promissory notes, instruments, documents and other agreements as City or its attorneys may reasonably request to evidence the Loans.
- (f) **Performance.** Owner and City agree to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Owner and City.

SECTION 5. CESSATION OF ADVANCES.

If City has made any commitment to make any Loan to Owner, whether under this Agreement or under any other agreement, City shall have no obligation to advance or disburse Loan proceeds if: (i) Owner becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 6. LOAN FORGIVENESS.

Notwithstanding the provisions hereof and the obligations contained in the Note executed incident hereto, any Loan advance hereunder shall be forgiven and not be payable to City upon completion of the affirmative covenants specified in Section 4 of this Agreement. **However, any Loan advance, not previously forgiven under the foregoing, shall not be forgiven in an Event of Default under Section 7 and Section 8 of this Agreement, and shall become immediately due and payable in accordance with this Agreement and the Note.**

SECTION 7. EVENTS OF DEFAULT.

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

- (a) **Financial Assistance for Qualified Expenditures.** Failure of Owner to provide to City receipts or invoices for Qualified Expenditures consistent with Section 4(a) of this Agreement.
- (b) **Approval of Final Inspection.** Failure of Owner to obtain an Approval of Final Inspection from the City of Mansfield, Texas, for the interior remodeling of a Restaurant on the Property, and is open to the general public consistent with Section 4(b) of this Agreement.
- (c) **Operate Restaurant.** Failure of Owner to maintain and operate the a Restaurant consistent with Section 4(c) of this Agreement.
- (d) **False Statements.** Any warranty, representation, or statement made or furnished to City by or on behalf of Owner under this Agreement or the Related Documents that is false or misleading in any material respect, either now or at the time made or furnished.
- (e) **Insolvency.** Owner's insolvency, appointment of receiver for any part of Owner's property, any assignment for the benefit of creditors of Owner, any type of creditor workout for Owner, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Owner.
- (f) **Other Defaults.** Failure of Owner or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents, or failure of Owner or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between City and Owner.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the City shall give written notice to Owner of any default, and Owner shall have thirty (30) days to cure said default. In the event Owner is unable or unwilling to cure said default within the prescribed cure period, the City shall

have the right to immediately terminate this Agreement and the Loan shall become immediately due and payable by Owner based upon the following schedule:

in the 1 st Year of Agreement	Repay \$12,352.00
on or after 1 st year but within 2 nd year of Agreement	Repay \$9,881.60
on or after 2 nd year but within 3 rd year of Agreement	Repay \$7,411.20
on or after 3 rd year but within 4 th year of Agreement	Repay \$4,940.80
on or after 4 th year but within 5 th year of Agreement	Repay \$2,470.40

SECTION 9. INDEMNIFICATION.

OWNER SHALL INDEMNIFY, SAVE, AND HOLD HARMLESS CITY, ITS DIRECTORS, OFFICERS, AGENTS, ATTORNEYS, AND EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST: (I) ANY AND ALL CLAIMS, DEMANDS, ACTIONS OR CAUSES OF ACTION THAT ARE ASSERTED AGAINST ANY INDEMNITEE IF THE CLAIM, DEMAND, ACTION OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY RELATES TO TORTIOUS INTERFERENCE WITH CONTRACT OR BUSINESS INTERFERENCE, OR WRONGFUL OR NEGLIGENT USE OF CITY'S LOAN ADVANCES BY OWNER OR ITS AGENTS AND EMPLOYEES; (II) ANY ADMINISTRATIVE OR INVESTIGATIVE PROCEEDING BY ANY GOVERNMENTAL AUTHORITY DIRECTLY OR INDIRECTLY RELATED, TO A CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IN WHICH CITY IS A DISINTERESTED PARTY; (III) ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION WHICH DIRECTLY OR INDIRECTLY CONTESTS OR CHALLENGES THE LEGAL AUTHORITY OF OWNER TO ENTER INTO THIS AGREEMENT; AND (IV) ANY AND ALL LIABILITIES, LOSSES, COSTS, OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) THAT ANY INDEMNITEE SUFFERS OR INCURS AS A RESULT OF ANY OF THE FOREGOING; PROVIDED, HOWEVER, THAT OWNER SHALL HAVE NO OBLIGATION UNDER THIS SECTION TO CITY WITH RESPECT TO ANY OF THE FOREGOING ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR THE BREACH BY CITY OF THIS AGREEMENT. IF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS ASSERTED AGAINST ANY INDEMNITEE, SUCH INDEMNITEE SHALL PROMPTLY NOTIFY OWNER, BUT THE FAILURE TO SO PROMPTLY NOTIFY OWNER SHALL NOT AFFECT OWNER'S OBLIGATIONS UNDER THIS SECTION UNLESS SUCH FAILURE MATERIALLY PREJUDICES OWNER'S RIGHT TO PARTICIPATE IN THE CONTEST OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION, AS HEREINAFTER PROVIDED. IF REQUESTED BY OWNER IN WRITING, AS SO LONG AS NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING, SUCH INDEMNITEE SHALL IN GOOD FAITH CONTEST THE VALIDITY, APPLICABILITY AND AMOUNT OF SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION AND SHALL PERMIT OWNER TO PARTICIPATE IN SUCH CONTEST. ANY INDEMNITEE THAT PROPOSES TO SETTLE OR COMPROMISE ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION OR PROCEEDING FOR WHICH OWNER MAY BE LIABLE FOR PAYMENT OF INDEMNITY HEREUNDER SHALL GIVE OWNER WRITTEN NOTICE OF THE

TERMS OF SUCH PROPOSED SETTLEMENT OR COMPROMISE REASONABLY IN ADVANCE OF SETTLING OR COMPROMISING SUCH CLAIM OR PROCEEDING AND SHALL OBTAIN OWNER'S CONCURRENCE THERETO.

SECTION 10. OWNER'S REPRESENTATIONS.

By execution hereof, the signators warrant and represent that they have the requisite authority to execute this Agreement and the Related Documents and that the representations made herein, and in the Related Documents, are true and accurate in all respects.

SECTION 11. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement, together with any Related Documents, 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 Tarrant County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Tarrant County, Texas.
- (c) **Attorneys Fees.** The prevailing party in the adjudication of any proceeding relating to this Agreement shall be authorized to recover its reasonable and necessary attorney's fees pursuant to Section 271.159 of the Texas Local Government Code.
- (d) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (e) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Owner warrants and represents that the individual or individuals executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. City warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (f) **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.
- (g) **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.

- (h) **Effective Date.** The effective date (the “Effective Date”) of this Agreement shall be the date of the later to execute this Agreement by Owner and City.
- (i) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown on Page 1 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party’s address. For notice purposes, Owner agrees to keep City informed at all times of Owner’s current address.
- (j) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (k) **Survival.** All warranties, representations, and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to City under this Agreement shall be considered to have been relied upon by City and will survive the making of the Loan and delivery to City of the Related Documents, regardless of any investigation made by City or on City's behalf.
- (l) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

OWNER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT, AND OWNER AGREES TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF _____, 2024.

BORROWER:

Cap House Mansfield, LLC

By: _____

Date Signed: _____

LENDER:

CITY OF MANSFIELD, TEXAS

By: _____

Joe Smolinski, City Manager, or designee

Date Signed: _____

Exhibit A

NOTE

PROMISSORY NOTE

\$12,352.00

_____, 2024
(“Effective Date”)

Cap House Mansfield, LLC (including successors and assigns, hereinafter referred to as the “Maker”), For Value Received, promises and agrees to pay unto the order of **CITY OF MANSFIELD**, a Texas municipal corporation (hereinafter referred to as the “Payee”), at its corporate offices located at 1200 E. Broad Street, Mansfield, Texas 76063, in lawful money of the United States of America, the principal sum of **Twelve Thousand Three Hundred Fifty Two and no/100 Dollars (\$12,352.00)**, or so much as shall be advanced, said sums to accrue no interest.

TERMS OF PAYMENT: The principal of this Note is due **on demand, however, if no demand is made**, on or before **May 31, 2029**. Notwithstanding the foregoing, loan proceeds hereunder shall be advanced in accordance with the terms and provisions of that certain 380 Agreement executed as of even date herewith between Maker and Payee (hereinafter referred to as the “380 Agreement”), and such loan proceeds shall be forgiven and or repaid according to said 380 Agreement after such advance if Maker is not then in default under the 380 Agreement. As such, Payee shall make no demand on principal under this Note except for upon occurrence of an Event of Default as that term is defined in the 380 Agreement.

ALL PAST due principal shall bear interest until paid at a rate not to exceed prime plus 4%.

THIS LOAN is a line of credit but is not revolving. As already stated, loan proceeds made hereunder are also governed by the Loan Agreement of even date herewith.

IF DEFAULT is made in the payment of any interest or principal hereof, as and when the same is or becomes due, or if an Event of Default occurs under any instrument securing the payment hereof or executed in connection herewith, including the 380 Agreement, the owner and holder of this Note may declare all sums owing hereon due and payable within thirty (30) days of the date of notice. If default is made in the payment of this Note at maturity (regardless of how its maturity may be brought about), and the same is placed in the hands of an attorney for collection, or suit is filed hereon, or proceedings are had in bankruptcy, probate, receivership or other judicial proceedings for the establishment or collection of any amount called for hereunder, or any amount payable or to be payable hereunder is collected through any such proceedings, Maker agrees and is also to pay to the owner and holder of this Note a reasonable amount as attorneys’ or collection fees.

Except as provided herein and in the 380 Agreement, upon an Event of Default (as that term is defined in the 380 Agreement) only, Maker, co-makers, signers, permitted assigns, sureties, endorsers and guarantors, and each of them, expressly waive demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, notice of intent to accelerate the maturity hereof, notice of the acceleration of the maturity hereof, bringing of suit and diligence in taking any action to collect amounts called for hereunder and in the handling of securities at any time existing in connection herewith; and are and shall be jointly, severally, directly and primarily liable for the payment of all sums owing and to be owing hereon, regardless

of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for hereunder or in connection with any right, lien, interest or property at any and all times had or existing as security for any amount called for hereunder.

IT IS the intention of Maker and Payee to conform strictly to applicable usury laws. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the State of Texas and the laws of the United States of America), then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this Note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this Note or under any of the other aforesaid agreements or otherwise in connection with this Note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be canceled automatically and, if theretofore paid, shall be credited on the Note by the holder hereof (or, to the extent that this Note shall have been or would thereby be paid in full, refunded to the Maker); and (ii) in the event that maturity of this Note is accelerated by reason of an election by the holder hereof resulting from any Event of Default, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this Note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on this Note (or, to the extent that this Note shall have been or would thereby be paid in full, refunded to the Maker).

THIS NOTE has been executed and delivered in and shall be construed in accordance with and governed by the laws of the State of Texas and of the United States of America, except that V.T.C.A. Finance Code, Chapter 346, as amended (which regulates certain revolving credit loan accounts and revolving tri-party accounts) shall not apply hereto. Payee's address for notice is 1200 E. Broad Street, Mansfield, Texas 76063.

In witness whereof, Maker has executed this Note to be effective as of the Effective Date.

MAKER:

Cap House Mansfield, LLC

By: _____

Date Signed: _____