

STATE OF TEXAS
COUNTY OF PARKER

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ECONOMIC DEVELOPMENT
INCENTIVE AGREEMENT

This **Economic Development Incentive Agreement** ("Agreement") is made by and among the City of Aledo, a Texas home rule municipality ("City"); the Aledo Economic Development Corporation, a Texas non-profit Type B economic development corporation ("AEDC") (collectively City and AEDC are referred to herein as "Grantors"); and LLC Press Café Aledo DBA Press Café/The Tavern, a limited liability company ("Company") (individually, "Party" and collectively, the "Parties"), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company intends to lease the real property and structures and improvements located thereon depicted and described in Exhibit "A" (the "Property") and intends to occupy the existing structure and ground to operate a restaurant; and

WHEREAS, Company intends to lease the Property for a period of at least seven (7) years (the "Lease"); and

WHEREAS, Company has advised Grantors that a contributing factor that would induce Company to lease and operate Press Café Aledo (the "Business") would be an agreement by Grantors to provide an economic development grant to Company as set forth herein; and

WHEREAS, promoting the expansion and maintenance of new or existing business enterprises within City's corporate limits will promote economic development, stimulate commercial activity, generate additional sales tax, and will enhance City's property tax base and economic vitality; and

WHEREAS, City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with those programs; and

WHEREAS, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity within City's corporate limits; and

WHEREAS, AEDC has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Chapters 501-505 of the Texas Local Government Code, as amended (the "Act"), authorizes AEDC to provide funds for projects, including expenditures for infrastructure suitable for new or expanded business enterprises; and

WHEREAS, AEDC has determined, under Section 505.158 of the Texas Local Government Code, that the grants to be made herein are expenditures required or suitable and necessary to

promote or develop new or expanded business enterprises and constitute a "project," as that term is defined in that Section and the Act; and

WHEREAS, City has determined that making an economic development grant to Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further City's objectives; (ii) benefit City and City's inhabitants; and (iii) promote local economic development and stimulate business and commercial activity within City corporate limits.

NOW, THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I: Term

This Agreement shall be effective on the last date of execution hereof ("**Effective Date**") and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article II: Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"AEDC Additional Cash Grant" shall mean an additional one time payment of Twenty-Five Thousand and No/100 Dollars (\$25,000) upon Company's request if the benchmark established in **Article IV** is met.

"AEDC Initial Cash Grant" shall mean the one time payment of Fifty Thousand and No/100 Dollars (\$50,000) to Company, upon Company's request no later than the Commence Date.

"AEDC Sales and Use Tax Grant" shall mean an economic development grant in the amount of seventy five percent (75%) of the Sales Tax Receipts received by AEDC for the applicable Reporting Period, not to exceed the Maximum AEDC Sales Tax Grant Amount to be paid to Company as set forth herein, which shall be calculated by multiplying the Sales Tax Receipts and the Use Tax Receipts received by AEDC for the given Reporting Period times seventy-five percent(75%), less the administrative fee charged to AEDC by the State of Texas for collection of the Sales and Use Taxes pursuant to Texas Tax Code, Section 321.503 or other applicable law, and any discount pursuant to Texas Tax Code, Section 151.423.

The following formula for the Sales and Use Tax Grant is provided for demonstrative purposes:

$.75 (\text{Sales Tax Receipts} \times \text{Use Tax Receipts}) - \text{Administrative Fee} - \text{Discounts}$.

"Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any part of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"City Manager" means the city manager of City, or their designee.

"City Sales and Use Tax Grant" shall mean an economic development grant to offset the costs of infrastructure necessary for the [Business] incurred and paid by Company in the amount of twenty-five percent (25%) of the Sales Tax Receipts received by City for the applicable Reporting Period, not to exceed the Maximum Sales Tax Grant Amount to be paid to Company as set forth herein, which shall be calculated by multiplying the Sales Tax Receipts and the Use Tax Receipts received by the City for the given Reporting Period times twenty-five percent (25%), less the administrative fee charged to City by the State of Texas for collection of the Sales and Use Taxes pursuant to Texas Tax Code, Section 321.503 or other applicable law, and any discount pursuant to Texas Tax Code, Section 151.423.

The following formula for the Sales and Use Tax Grant is provided for demonstrative purposes:

$$.25 (\text{Sales Tax Receipts} \times \text{Use Tax Receipts}) - \text{Administrative Fee} - \text{Discounts.}$$

"Commencement Date" shall mean the date City has issued a certificate of occupancy for the occupancy the [Business] by Company.

"Company Affiliate" shall mean an entity related to Company by direct or indirect common or overlapping majority ownership or control.

"Company Books and Records" shall mean those paper and electronic records, books, documents, tangible accounting procedures, tangible practices, or any other items related to Company's performance of this Agreement.

"Comptroller " shall mean the Office of the Texas Comptroller of Public Accounts, or its successor.

"Consummated" shall have the same meaning assigned by Texas Tax Code, Section 321.203, or its successor.

"Expiration Date" shall mean the earlier of: (i) date of payment of the Maximum Sales and Use Tax Grant Amount; (ii) the seventh (7th) anniversary of the Commencement Date; or (iii) ten (10) years from the Effective Date, unless sooner terminated as provided herein.

"Force Majeure" shall mean an occurrence of any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy; war; riot; terrorism; civil commotion; insurrection; government or de facto governmental action, restrictions, or interferences (unless caused by the intentional acts or omissions of the Party); strikes, slowdowns, or work stoppages; incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or similar causes affecting the area in which the [Business] is

located that results in a reduction of labor force or work stoppage in order to comply with local, state, or national disaster orders; construction delays or unavailability of supplies, materials, or labor; necessary condemnation proceedings; or any other circumstances that are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, in which case 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 performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than fifteen (15) business days after the last day of the month of the occurrence of the event(s) or condition(s) causing the delay or the date the Party whose performance has been delayed becomes aware or should have reasonably known of the event, describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within City's corporate limits.

"Maximum AEDC Sales and Use Tax Grant Amount" shall mean the cumulative payment of the AEDC Sales and Use Tax Grant, not to exceed the amount of Two Hundred and Twenty-Five Thousand and No/100 Dollars (\$225,000.00).

"Maximum City Sales and Use Tax Grant Amount" shall mean the cumulative payment of the City Sales and Use Tax Grant, not to exceed the amount of Seventy-Five Thousand and No/100 Dollars (\$75,000.00).

"Maximum Sales and Use Tax Grant Amount" shall mean the cumulative payment of the City Sales and Use Tax Grant and AEDC Sales and Use Tax Grants not to exceed the respective City Maximum Sales Tax Grant Amount, and the AEDC Maximum Sales Tax Grant Amount in the amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00).

"Payment Request" shall mean a written request from Company to City for payment of a Sales and Use Tax Grant accompanied by the Sales and Use Tax Certificate for the applicable Reporting Period and invoices, receipts, bills, and other records to evidence the costs incurred and paid by Company for the necessary infrastructure for the [Business].

"Related Agreements" shall mean any agreement (other than this Agreement) by and between Grantors and Company and/or any Company Affiliate.

"Reporting Period" shall mean each consecutive twelve (12) month period during the term of this Agreement provided, however, the first Reporting Period shall begin with the calendar month immediately following the Commencement Date.

"Required Use" shall mean Company's continuous occupancy of the Property and the continuous operation of [Business], during the term of this Agreement.

"Sales and Use Tax" shall mean the following:

- (a) With respect to City, the tax authorized and levied pursuant to Section 321.101 of the Texas Tax Code and payable into the general fund, currently established at one percent (1%), on sale of Taxable Items by Company Consummated at the [Business] during the applicable Reporting Period. City Sales and Use Taxes shall not include sales and/or use taxes levied and collected exclusively for special purposes (such as a Type A or Type B Corporation) created and operating under the Act. If City, at its discretion, ever elects to, or the voters choose to, reallocate the City Sales and Use Tax and to levy less than a one percent (1%) sales tax, then "Sales and Use Taxes" shall mean the amount of sales taxes actually received by City arising from the actual City Sales and Use Tax levied on gross taxable sales. Should the voters or the City set the City Sales and Use Tax rate at more than one percent (1%), (the "City Sales and Use Tax") the "Sales and Use Tax," as referenced herein, will not exceed one percent (1%);
- (b) With respect to AEDC, the tax authorized and levied pursuant to the Act and payable into the general fund, currently established at one-half of one percent (0.5%), on sale of Taxable Items by Company Consummated at the [Business] during the applicable Reporting Period. If AEDC, at its discretion, ever elects to, or the voters choose to, reallocate AEDC Sales and Use Tax and to levy less than a one-half of one percent (0.5%) sales tax, then "Sales and Use Taxes" shall mean the amount of sales taxes actually received by AEDC arising from the actual Sales and Use Tax levied on gross taxable sales. Should the voters set AEDC sales and use tax rate at more than one-half of one percent (0.5%), (the "AEDC Sales and Use Tax") the "Sales and Use Tax," as referenced herein, will not exceed one-half of one percent (0.5%).

"Sales and Use Tax Certificate" shall mean a report provided by the Comptroller to City in accordance with Texas Tax Code, Section 321.3022 (or other applicable provision of the Texas Tax Code), which lists the amount of Sales and Use Tax (including any refunds, credits, or adjustments) paid to the Comptroller for the sale of Taxable Items by Company Consummated at the [Business], or if requested by City, a certificate or other statement, containing such information in a form provided by Company reasonably acceptable to City, setting forth the total sale of Taxable Items by Company Consummated at the [Business] and Company's collection of Sales and Use Tax (including any refunds, credits or adjustments) paid to the Comptroller, for the sale of Taxable Items by Company Consummated at the [Business], during the applicable Reporting Period, and such other information as City may reasonably request.

"Sales and Use Tax Grant" shall mean City Sales and Use Tax Grant and AEDC Sales and Use Tax Grant.

"Sales and Use Tax Receipts" shall mean: (i) with respect to City, City's receipts of Sales and Use Tax from the Comptroller (it being expressly understood that City's one percent (1%) Sales and Use Tax Receipts are being used only as a measurement for its use of general funds to make a grant for economic development purposes) attributable to the sale of Taxable Items by Company Consummated at the [Business]; and (ii) with respect to AEDC, AEDC's receipts of Sales and Use Tax from the Comptroller from Company collection of Sales and Use Tax (it being expressly

understood that AEDC's one half of one percent (0.5%) Sales and Use Tax Receipts are being used only as a measurement for its use of general funds to make a grant for economic development purposes) attributable to the sale of Taxable Items by Company Consummated at the [Business].

"**Taxable Items**" shall mean both "taxable items" and "taxable services" as those terms are defined by Chapter 151, Texas Tax Code, as amended.

Article III: Economic Development Grants

3.1 Sales and Use Tax Grants.

- (a) **Sales and Use Tax Grant Payment.** Subject to the continued satisfaction of all terms and conditions of this Agreement by Company, and the obligation of Company to repay the Sales and Use Tax Grants pursuant to Article V hereof, Grantors agree to provide Company with the Sales and Use Tax Grants not to exceed the Maximum Sales Tax Grant Amount, until the Expiration Date. The Sales and Use Tax Grants shall be paid annually not later than ninety (90) days after receipt of the applicable Payment Request following the end of the applicable Reporting Period beginning with the first Reporting Period. Company may submit the Payment Request for a Sales and Use Tax Grant not later than thirty (30) days following the end of the applicable Reporting Period, beginning with the first Reporting Period but not later than ninety (90) days thereafter. Failure to timely submit a Payment Request for a given Sales and Use Tax Grant Reporting Period shall operate as a forfeiture of the Sales and Use Tax Grant for such Reporting Period.
- (b) **Adjustment Notification.** Company shall promptly notify City in writing of any adjustments found, determined, or made by Company, the Comptroller, or by an audit which results, or will result, in either a refund or reallocation of Sales and Use Tax Receipts, the payment of Sales and Use Tax, or involving amounts reported by Company as subject to this Agreement. Such notification shall also include the amount of any such adjustment in Sales and Use Tax or Sales and Use Tax Receipts. Company shall notify City in writing not later than thirty (30) days after receipt of notice of the intent of the Comptroller to audit Company. Such notification shall also include the period of such audit or investigation.
- (c) **Adjustments.** In the event Company files an amended Sales and Use Tax Certificate with the Comptroller, or if additional Sales and Use Tax is due and owing by Company to the Comptroller, as determined, or approved by the Comptroller affecting Sales and Use Tax Receipts for a previous Reporting Period, then the Sales and Use Tax Grant payment for the Reporting Period immediately following such Comptroller approved amendment shall be adjusted accordingly (i.e., up or down, depending on the facts) provided City has received Sales and Use Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Company shall provide City with a copy of any such amended Sales and Use Tax Certificate, and the approval thereof by the Comptroller. Copies of any amended Sales and Use Tax Certificate or notification from the Comptroller

that additional Sales and Use Tax is due and owing by Company to the Comptroller, as determined by the Comptroller, affecting Sales and Use Tax Receipts for a previous Reporting Period shall be provided to City with the Payment Request for the next Reporting Period.

- (d) Refunds and Underpayments of Sales and Use Tax Grants. In the event the Comptroller determines that Grantors erroneously received Sales and Use Tax Receipts, or that the amount of Sales and Use Tax paid to Company exceeds (or is less than) the correct amount of Sales and Use Tax for a previous Reporting Period, for which Company has received a Sales and Use Tax Grant, Company shall, not later than sixty (60) days after receipt of notification thereof from City specifying the amount by which such Sales and Use Tax Grant exceeded the amount to which Company was entitled pursuant to such Comptroller determination, adjust (up or down, depending on the facts) the amount claimed due for the Sales and Use Tax Grant payment for the Reporting Period immediately following such Comptroller determination in an amount equivalent to the overpayment received by Company. If Company does not adjust the amount claimed due for the Sales and Use Tax Grant payment for the Reporting Period immediately following such Comptroller determination, City (and on behalf of AEDC) may, at its option, adjust the Sales and Use Tax Grant payment for the Reporting Period immediately following such Comptroller determination in an amount equivalent to the overpayment received by Company. If the adjustment results in funds to be paid back to City, Company shall repay such amount to Grantors not later than sixty (60) days after receipt of such Comptroller determination. The provisions of this section shall survive termination of this Agreement.
- (e) Sales and Use Tax Grant Payment Termination or Suspension. The payment of the Sales and Use Tax Grants shall terminate on the effective date of determination by the Comptroller or other appropriate agency or court of competent jurisdiction that the [Business] is not a place of business resulting in Sales and Use Taxes being due Grantors for the sale of Taxable Items by Company at the [Business]. In the event the Comptroller seeks to invalidate the [Business] as a place of business where Sales and Use Tax was properly remitted to the Comptroller (the "Comptroller Challenge"), the payment of Sales and Use Tax Grants by Grantors hereunder shall be suspended until such Comptroller Challenge is resolved in whole favorably to Grantors. In such event, Company shall not be required to return or refund Sales and Use Tax Grants previously received from Grantors provided Company is actively defending against and/or contesting the Comptroller Challenge and Company promptly informs Grantors in writing of such actions and with copies of all documents and information related thereto. If (i) the Comptroller Challenge is not resolved favorably to Grantors and/or the Comptroller determines (a) that Company does not have a place of business at the [Business] or (b) that the [Business] is not a place of business where the Sales and Use Tax was properly remitted to the Comptroller, and (ii) Sales Tax Receipts previously paid or remitted to Grantors relating to the [Business] is reversed, reallocated and required to be repaid to the Comptroller, then the obligation to pay the Sales and Use Tax Grants shall terminate and Company shall refund all Sales and Use Tax Grants received by Company from Grantors that relate to the Comptroller Challenge. Such refund

shall be paid to Grantors not later than thirty (30) days after the date that the Comptroller Challenge required Grantors to repay the Sales Tax Receipts or is otherwise deducted from future Sales Taxes due Grantors.

- (f) **Revenue Sharing Agreement.** City and Company designate this Agreement as a "revenue sharing agreement," thereby entitling City to request annual Sales and Use Tax information from the Comptroller pursuant to Section 321.3022 of the Texas Tax Code, as amended, or other applicable law. City shall request in writing that the Comptroller issue Sales and Use Tax reports pursuant to Section 321.3022 the Sales and Use Tax Certificate for each of the qualified periods of the Sales and Use Tax Grants. To the extent that the release of any such reports or information regarding the Sales and Use Tax collected by Company for the sale of Taxable Items Consummated at the [Business] shall require the consent of Company. Company shall provide such consent to City. Company shall provide the sales tax identification numbers for Company so that payments can be verified by City.
- (g) **Indemnification.** COMPANY AGREES TO DEFEND, INDEMNIFY, AND HOLD GRANTORS, THEIR OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE COMPTROLLER THAT GRANTORS HAVE BEEN PAID ERRONEOUSLY, OVER-PAID, OR INCORRECTLY ALLOCATED SALES AND USE TAX ATTRIBUTED TO THE SALE OF TAXABLE ITEMS BY COMPANY CONSUMMATED AT THE [Business] FOR ANY REPORTING PERIOD DURING THE TERM OF THIS AGREEMENT (COLLECTIVELY, A "**CLAIM**"). IT BEING THE INTENTION OF THE PARTIES THAT COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY SALES AND USE TAX GRANTS PAID TO COMPANY HEREIN BY GRANTORS THAT INCLUDES SALES AND USE TAX RECEIPTS THAT THE COMPTROLLER HAS DETERMINED WERE PAID ERRONEOUSLY, COLLECTED, DISTRIBUTED, OR ALLOCATED TO GRANTORS. THE INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM THE ERRORS OR OMISSIONS OF GRANTORS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM COMPANY TO GRANTORS TO PERFORM OBLIGATIONS.

3.2 **Audit.** Company shall grant access to Grantors, or such other persons or entities designated by either the City or AEDC, at Company's offices during Company's normal business hours, for the purpose of inspecting the Company Books and Records, provided that the City or AEDC provide not less than two (2) business days' prior notice. Grantors or their representatives shall not unreasonably disrupt Company's operations during the performance of such inspection and audit. The foregoing, notwithstanding all records, books, documents, accounting procedures, practices, or any other items relevant to the performance of this Agreement, shall be subject to examination

or audit by Grantors, or such other persons or entities designated by City or AEDC, in accordance with state and federal laws, regulations, or directives applicable to Company's performance of this Agreement. Grantors agree, to the extent allowed by law, to maintain the confidentiality of the Company Books and Records.

3.3 **Current Revenue.** The Sales and Use Tax Grants shall be paid solely from annual appropriations from AEDC's general funds and City's general funds or from such other City funds as may be legally set aside for such purpose consistent with Article III, Section 52(a) of the Texas Constitution.

3.4 **Grant Limitations.** Under no circumstance shall Grantors' obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Provided, however, Grantors agree during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Sales and Use Tax Grants for the then ensuing fiscal year. Grantors shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by Company. None of Grantors' obligations under this Agreement shall be pledged or otherwise encumbered by Company in favor of any commercial lender and/or similar financial institution.

Article IV: Conditions to Grants

4.1 Grantors' Obligations.

(a) Grantors' obligation to pay the AEDC Initial Cash Grant shall be conditioned upon the following:

- (1) Company's request of payment no later than the Commencement Date; and
- (2) Company providing to the City a copy of the executed seven (7) year Lease for the Property.

(b) Grantor's obligation to pay the AEDC Additional Cash Grant shall be conditioned upon Company generating at least two hundred thousand dollars (\$200,000.00) in Sales and Use Tax revenue no later than the third year after the Commencement Date.

(c) Grantors' obligation to pay the Sales and Use Tax Grants shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article IV provided that failure to meet a condition shall not prevent the payment of the applicable Sales and Use Tax Grant prior to the specified deadline for satisfaction of the condition.

4.2 **Payment Request.** Company shall, as a condition precedent to the payment of each Sales and Use Tax Grant, timely provide City (acting for itself and AEDC) with the applicable Payment Request.

4.3 **Good Standing.** Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

4.4 **Required Use.** During the term of this Agreement, beginning on the Commencement Date and continuing until the Expiration Date, the Improvements shall not be used for any purpose other than the Required Use, and the operation of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) continuous days, except in connection with, and to the extent of, an event of Force Majeure or casualty.

4.5 **Continuous Lease and Occupancy.** Company shall, beginning on the Commencement Date and continuing thereafter until the Expiration Date, continuously lease and occupy the [Business], except in the event of Force Majeure.

4.6 **Sales and Use Tax Certificate.** As a condition to the payment of each Sales and Use Tax Grant hereunder, Grantors shall have timely received a Sales and Use Tax Certificate for the applicable Reporting Period for which payment of a Sales and Use Tax Grant is requested. Grantors shall have no duty to calculate the Sales Tax Receipts or determine the entitlement of Company to any Sales and Use Tax Grant or pay any Sales and Use Tax Grant during the term of this Agreement until such time as Company has provided City a Sales and Use Tax Certificate for the applicable Reporting Period. City may, but is not required to, provide Company with a form for the Sales and Use Tax Certificate required herein. Company shall provide such additional documentation as may be reasonably requested by Grantors to evidence, support, and establish the Sales and Use Tax paid and collected for the sale of Taxable Items by Company Consummated at the [Business] and received by Grantors from the Comptroller. Grantors agree, to the extent allowed by law, to maintain the confidentiality of the Sales and Use Tax Certificate.

4.7 **Schedule of Jobs.** Company anticipates that following the Commencement Date, at least two (2) permanent full-time employment positions shall have been created at the [Business].

Article V: Termination

5.1 **Termination.** This Agreement shall terminate upon the Expiration Date unless terminated earlier as follows:

- (a) By written agreement of the Parties;
- (b) On the date of termination set forth in a written notice provided by a Party to the other Parties in the event the other Party breaches any of the terms or conditions of this Agreement or a Related Agreement, and such breach is not cured on or before the thirtieth (30th) day after the non-breaching Party sends written notice to the breaching Party of such breach;
- (c) On the date of termination set forth in a written notice by City (and on behalf of AEDC) to Company if Company suffers an event of Bankruptcy or Insolvency;
- (d) On the date of termination set forth in a written notice by City (and on behalf of AEDC) to Company if any Impositions owed to City or the State of Texas by

Company shall become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such Impositions):

- (e) On the date of termination set forth in a written notice by a Party to the other Party if either Party receives notice that any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable; or
- (f) On the date of payment of the Maximum Sales and Use Tax Grant Amount.
- (g) If the Company has not executed the Lease within twelve (12) months of the Effective Date of this Agreement, the City has the option to terminate this Agreement by providing a written notice to the Company. Upon receipt of the written notice, Company may request up to two six (6) month extensions, which may be approved at the discretion of the City Manager.

5.2 **Repayment.** In the event this Agreement is terminated by City pursuant to Section 5.1 (b), (c), (d), (e), or (g) Company shall immediately refund to City (and on behalf of AEDC) an amount equal to the AEDC Cash Grant, and Sales Tax Grants paid by Grantors to Company preceding the date of such termination, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate from the date on which each Sales Tax Grant is paid by Grantors until each such Sales Tax Grant is refunded by Company. The repayment obligation of Company set forth in this Section shall survive termination.

5.3 **Right of Offset.** City (on behalf of City and AEDC) may, at its option, offset any amounts due and payable under this Agreement or a Related Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement, or otherwise, and regardless of whether the debt due City has been reduced to judgment by a court.

Article VI: Miscellaneous

6.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned without the express written consent of the City Manager and the AEDC Executive Director.

6.2 **Limitation on Liability.** It is understood and agreed between the Parties that Company, in satisfying the conditions of this Agreement, has acted independently, and City and AEDC assume no responsibilities or liabilities to third parties in connection with these actions. **COMPANY AGREES TO INDEMNIFY AND HOLD HARMLESS CITY, AEDC, AND THEIR OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUCH CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES, AND EXPENSES OF ANY NATURE WHATSOEVER BY A THIRD PARTY ARISING OUT OF COMPANY'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT.**

6.3 **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the Parties.

6.4 **Authorization.** Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.5 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day received if sent by courier or otherwise hand-delivered.

If intended for City or AEDC, to:

Attn: Noah A. Simon
City Manager
City of Aledo, Texas
PO Box 1
Aledo, Texas 76008

With a copy to:

Alicia Kreh
City Attorney
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.,
600 Western Place, Ste 200
Fort Worth, Texas 76107

If intended for Company, to:

Courtney Smith
2755 South Hulen
Fort Worth, Texas 76109

6.6 **Entire Agreement.** This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement.

6.7 **Governing Law.** This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action concerning this Agreement shall be in the State District Court of Parker County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 **Amendment.** This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 **Recitals.** The recitals to this Agreement are incorporated herein.

6.11 **Counterparts.** This Agreement may be executed in identical counterparts. Each of the counterparts shall be deemed an original instrument, but all the counterparts shall constitute one

and the same instrument.

6.12 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement, shall survive termination.

6.13 **Employment of Undocumented Workers.** During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the amount of the Sales and Use Tax Grants and any other funds received by Company from City and or AEDC as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of Company, or by a person with whom Company contracts.

6.14 **Conditions Precedent.** This Agreement is subject to, and the obligations of the Parties are expressly contingent upon: (i) execution of the Lease by Company, and delivery of a fully executed copy of the Lease to City; (ii) the authority of AEDC to undertake the obligations therein as an authorized project under the Act sixty (60) days after public hearing and notice thereof; and (iii) approval of this Agreement and the project set forth herein by City Council.

6.15 **Anti-Boycott Verifications.** Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such section does not contravene applicable federal law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. For purposes of this paragraph, Company understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with Company and exists to make a profit.

6.16 **Iran, Sudan and Foreign Terrorist Organizations.** Company represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:
<http://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<http://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such section does not contravene applicable federal law and excludes Company and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a

foreign terrorist organization. For purposes of this paragraph, Company understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with Company and exists to make a profit.

6.17 **Fossil Fuels Boycott Verification.** As required by 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended. Company hereby verifies that Company, including any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the same, does not boycott energy companies, and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, "boycott energy companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code, as amended.

6.18 **Firearms Discrimination Verification.** As required by Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, SB 19), as amended. Company hereby verifies that Company, including any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the same, (i) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, "discriminate against a firearm entity or trade association" shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19), as amended.

SIGNED AND AGREED TO THIS 20th DAY OF June, 2023.

CITY OF ALEDO

BY: [Signature]
MAYOR

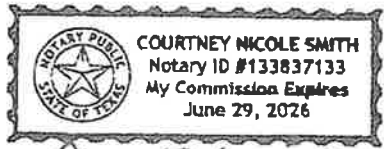
BY: [Signature]
AEDC PRESIDENT

APPROVED AS TO FORM:

BY: Felipe Acosta

SIGNED AND AGREED TO THIS 21 DAY OF JUNE, 2023.

BY: [Signature]



[Signature]
6/21/23

**EXHIBIT A
DEPICTION AND DESCRIPTION OF THE PROPERTY**

[TO BE PROVIDED BY THE COMPANY]