

THE STATE OF TEXAS §
§
§ **Chapter 380 Grant Agreement**
§ **Project – 107 W. BOYCE STREET**
MIXED-USE
COUNTY OF TRAVIS § **DEVELOPMENT**

THIS CHAPTER 380 GRANT AGREEMENT for a development project located at 107 W Boyce (hereinafter, this “Agreement”) is executed by and between **JIWON JUNG** (hereafter referred to as “**OWNER**”) and the **CITY OF MANOR, TEXAS**, a home-rule city and municipal corporation of Travis County, Texas (hereinafter, the “**CITY**”).

W I T N E S S E T H:

- WHEREAS**, the CITY has established an Economic Development Policy (hereinafter, the “Policy”) pursuant to Chapter 380, Texas Local Government Code, to provide for a grant of economic development incentives to new or expanding businesses in Trinidad under the terms and conditions of this Agreement; and
- WHEREAS**, the City has determined that the OWNER qualifies for economic development incentives under the Policy, subject to the terms and conditions of this Agreement; and
- WHEREAS**, the Property is not located within a tax increment financing district;
- WHEREAS**, the OWNER owns/leases the following described property: approximately .395 acres of property located in Travis County, Texas, being more particularly described in **Exhibit A** attached hereto and incorporated herein for all purposes (hereinafter, the “Property,” and further defined herein); and
- WHEREAS**, the OWNER will install or cause to be installed approximately \$4.5 million in capital improvements on the Property; and
- WHEREAS**, the OWNER made application to the CITY for an economic incentive related to the construction of a buildings of approximately 18,600 square feet on the Property (hereinafter, the “Facility,” and further defined herein); and
- WHEREAS**, the construction of the Facility, the relocation of the OWNER to the Property, and operation of the Business Operations on the Property will promote economic development of the CITY, encourage businesses to locate and expand in the CITY, and increase opportunities for increased property tax and employment; and
- WHEREAS**, the Parties agree that the OWNER must fulfill its obligations under this Agreement in order for the CITY to pay the Chapter 380 Grant (herein defined); and
- WHEREAS**, Chapter 380 of the Texas Local Government Code provides statutory authority for granting the economic incentives and administering the Policy provided herein; and

WHEREAS, the City Council finds that it is in the public interest to provide the economic incentives set forth herein subject to the terms and conditions of this Agreement.

NOW THEREFORE, the CITY and the OWNER, for and in consideration of the mutual premises and promises contained herein, the receipt and sufficiency thereof is hereby acknowledged, do hereby agree, covenant and contract as set forth below:

I.
Definitions

- A. “**Business Operations**” refers to the OWNER’S business operating on the Property.
- B. “**Business Personal Property**” is defined as tangible personal property, materials, supplies, equipment, inventory, fixtures, or other personal property that are attributable to the Business Operations and located at the Premises and to the structures and uses present on the Property subject to ad valorem taxes, and that are not included in the definition of real property in Section 1.04(2) of the Texas Tax Code, as amended.
- C. “**Calendar Year**” means the twelve month period of time that begins on January 1st and ends on December 31st of the same numbered year.
- D. “**Chapter 380 Grant**” is defined as the the economic incentive payment further described in Article V, not to exceed the Maximum Grant Amount.
- E. “**Certificate of Occupancy**” means the final certificate of occupancy issued by the City for the Facility.
- F. “**Eligible Property**” is defined as the Property, all real property improvements affixed to the Property and business property located thereon.
- G. “**Facilities**” means the building totaling approximately 18,600 square feet, suitable for the Business Operations, constructed on the Property in accordance with the CITY-approved plans, and applicable local, state, and federal regulations, out of which the Business Operations will be conducted.
- H. “**Full-time Employee or FTE**” is defined as an employee or on-site independent contractor of the OWNER or its tenants or subtenants whose assigned work location is at the Property in the City of Manor and is working at least a thirty (30)-hour work week. An “on-site independent contractor” is a person who regularly performs work on the Property on average of thirty (30) hours per week. Multiple part-time employees shall be the equivalent of one Full-Time Employee so long as the aggregate number of hours regularly worked by the part-time employees counted toward a Full-Time Employee meets or exceeds thirty (30) hours per week on average.
- I. “**Grant Criteria**” is defined as the criteria set forth in Article IV that the OWNER must meet to receive the Chapter 380 Grant defined in Article V.

- J. **“Maximum Grant Amount”** shall mean the the total amount of payments paid to OWNER under this Agreement, whether by Sales Tax Rebate, Real Property Tax Rebate, or combination thereof, in the schedule provided in Section V.A.1 herein and in an amount not to exceed \$354,547.00.
- K. **“Ongoing Documentation”** is defined as copies of the following documents for the tax year for which a Chapter 380 Grant is sought: (1) proof of compliance with Section IV.A(2); (2) proof that the OWNER or its tenants or subtenants whose assigned work location is at the Property has employed the number of FTE’s required by this Agreement; (3) proof of payment ad valorem and business personal property taxes; and (4) the 380 Grant Certification described in Article VI. The CITY may reasonably request additional records to support the information shown in the Ongoing Documentation and compliance with the applicable Grant Criteria.
- L. **“Ongoing Grant Criteria”** is defined as the criteria the OWNER is required to meet for payment of Chapter 380 Grants after Year 1, which are set forth in Section IV.A(2).
- M. **“Premises”** are defined as the real property (land and improvements) located on the Property.
- N. **“Project”** is defined to mean the Facility, together with all other accessory and permitted uses on the Property, upon which the Business Operations will be conducted.
- O. **“Property”** is defined as that certain .395 acre tract, being more particularly described in **Exhibit A**.
- P. **“Annual Incentive Payment(s)”** means the quarterly Sales Tax Rebate and Real Property Tax Rebate for the four calendar quarters in each of the three (3) full Calendar Years that follow the first Sales Tax Rebate Payment.
- Q. **“Real Property Improvements”** are defined as improvements to the Property, which shall include the Project and any other buildings, structures or fixtures erected or affixed to land on the Property that are included in the definition of real property set forth in Section 1.04(2), Texas Tax Code as amended.
- “Real Property Tax Rebate”** means the percentage of Real Property Taxes paid by the OWNER and actually received by the City and paid to the OWNER pursuant to Section V.A.1.
- R. **“Real Property Taxes”** shall mean the ad valorem tax assessed on the Eligible Property or a portion thereof, as appropriate, appraised by the Travis Central Appraisal District.
- S. **“Sales Tax”** means, as of the Effective Date, the levied 1.5% sales tax for commercial activity on the Property less the 0.5% sales tax enacted by the City of property tax reduction, equaling a total of 1.0% sales tax.
- T. **“Sales Tax Rebate”** means the percentage of Sales Tax paid by the OWNER and actually received by the City and paid to the OWNER pursuant to Section V.A.1.

- U. **“Threshold Documentation”** is defined as copies of the following documents: (1) proof of compliance with Section IV.A(1); (2) proof that the OWNER has employed the number of FTE’s required by this Agreement; (3) proof that \$4.5 million in Real Property Improvements were constructed on the Property (provided by receipts); (4) proof that \$200,000 in furniture, fixtures, and equipment have been invested in and exist at the Project (receipts and visual inspection); (5) proof that the Certificate of Occupancy for the Facility and documentation acceptable to the CITY demonstrating that the Facility was installed and completed on the Property, but not later than December 31, 2027 (6) the OWNER has employed the number of FTE’s required by this Agreement; and (7) the 380 Grant Certification described in Section VI.A. The CITY may request additional records to support the information shown in the Threshold Documentation or compliance with this Agreement.
- V. **“Threshold Grant Criteria”** is defined as the criteria the OWNER is required to meet for payment of Chapter 380 Grants to be paid, which are set forth in Section IV A(1).
- W. **“Year 1”** is defined as the tax year following the date on which the Facility is constructed and completed on the Property, a Certificate of Occupancy is issued for the Facility, and the OWNER begins Business Operations with the required number of FTE’s.

II.
General Provisions

- A. The Eligible Property is not in an improvement project financed by tax increment bonds.
- B. The Eligible Property is not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of CITY.
- C. It is acknowledged and agreed by the parties that the completion of the Project is consistent with the purposes of encouraging state and local economic development and to stimulate business and commercial activity within the City.

III.
Representations and Warranties

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

governing body or authority by all actions necessary to bind the OWNER to his Agreement. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of OWNER, is enforceable in accordance with its terms and provisions, and does not require the consent of any other authority or entity. OWNER represents and warrants that OWNER is a registered business in the State of Texas.

IV.
Performance Criteria

A. Grant Criteria.

B.

1. **Threshold Grant Criteria.** The following events must occur for the OWNER to receive the Chapter 380 Grant described in Article V:
 - a. The OWNER constructs at least \$4.5 million in Real Property Improvements on the Property and \$200,000 in furniture, fixtures, and equipment investment being utilized in the businesses located at the Property.
 - b. The OWNER completes and obtains a Certificate of Occupancy for the Facility not later than December 1, 2027.
 - c. The OWNER commences the Business Operations on the Property and employs at least 8 Full-Time Employees at the Business within 240 days of obtaining the Certificate of Occupancy.
 - d. The OWNER is in compliance with Sections IV.B-D.

 2. **Ongoing Grant Criteria.** After the first Chapter 380 Grant payment made to the OWNER, the OWNER must comply with the following requirements for each year in which the OWNER seeks a Chapter 380 Grant payment:
 - a. The Facility is continuously open for business during regular business hours and Business Operations are conducted at the Facility.
 - b. Tenants/Subtenants/Occupants of the Business Operations portion of the Property employ the following minimum number of Full Time Employees at the Business:
 1. 8 Full Time Employees with an average annual salary of \$40,000 (see I above).
 - c. The OWNER is in compliance with Section IV.B-D.
- C. The Project shall conform to the applicable building codes, zoning ordinances, plans approved by the jurisdiction issuing permits for the Project, and all other applicable Federal and State Laws, ordinances, and regulations.
- D. The OWNER shall not allow the ad valorem taxes, or business personal property owed to CITY or the Travis Consolidated Independent School District (hereinafter, the "District") on any real property or business personal property owned by OWNER and located within the City of Manor or the District to become delinquent beyond the last day they can be paid without assessment of penalty. Notwithstanding the foregoing the OWNER may contest

and appeal any and all taxes/ad valorem taxes associated with the Property and owed to the District or any other applicable governmental entity, and during such appeal/contest the OWNER shall not be required to pay taxes/ad valorem taxes associated with the Property to the District or any other applicable governmental entity until such time as the contest/appeal is finally and fully resolved, and in such event the City shall not be required to pay the Chapter 380 Grant until the contest/appeal is finally and fully resolved.

- E. The OWNER covenants and certifies that the OWNER does not and will not knowingly and directly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if the OWNER is convicted of a violation under 8 U.S.D. Section 132(a)(f), the OWNER shall repay to the CITY the full amount of Chapter 380 Grants made under Article V of this Agreement. Repayment shall be paid within 120 days after the date following an un appealable conviction of the OWNER, provided, however, the OWNER shall not be liable for a violation by a subsidiary, affiliate, or franchisee of the OWNER or by a person with whom the OWNER contracts including, but not limited to, all tenants and subcontractors.

V.

Economic Development Grants

A. **Chapter 380 Grants.**

1. Subject to the terms and of this Agreement, and OWNER's full and timely performance of, and compliance with, each of the applicable Grant Criteria set forth in Article IV, the CITY agrees to pay to OWNER the following Chapter 380 Grant commencing in Year 1 and continuing for each subsequent year up to 9 additional years, provided that the Chapter 380 Grant will cease when the Maximum Grant Amount has been reached:

- Year 1:
 - An amount equal to 100% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.
- Year 2:
 - An amount equal to 90% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.
- Year 3:
 - An amount equal to 80% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.

- Year 4:
 - An amount equal to 70% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.
- Year 5:
 - An amount equal to 60% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.
- Year 6:
 - An amount equal to 50% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.
- Year 7:
 - An amount equal to 40% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.
- Year 8:
 - An amount equal to 30% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.
- Year 9:
 - An amount equal to 20% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.
- Year 10:
 - An amount equal to 10% of the Real Property Taxes received by the City on an annual basis.
 - An amount equal to 50% of the City's 1% local sales tax collected on the sales of the tenants of the Property.

B. Payment of Annual Chapter 380 Grants

1. The City shall pay the Real Property Tax Rebate Amount annually and the Sales Tax Rebate quarterly as provided in this Subsection B. To be eligible to receive the Chapter 380 Grant in the years following Year 1, the terms of V.A.1 must be met each year. The OWNER will not be paid the 380 Grant payment for those tax years in which the Ongoing Grant Criteria are not met.

2. Each year on or before April 30, the OWNER shall provide the City the Documentation described in Article VII. The City shall pay the Real Property Tax Rebate Amount annually upon the later to occur of: (i) forty-five (45) days following the date the Documentation is received by the City; or (ii) within forty-five (45) days following the date the Real Property Taxes are received by the City and the OWNER has notified the City that the taxes have been paid; provided that the applicable Grant Criteria as set forth in Article V have been met.
3. After receipt for the Documentation for a particular year, the City shall pay the OWNER the Sales Tax Rebates for the Calendar Year in which the Documentation was provided; provided that the applicable Grant Criteria as set forth in Article V have been met. The Sales Tax received by the City for the twelve (12) calendar quarters of the three Calendar Years beginning with Year 1 will be deposited and paid out to the OWNER, in arrears. The City shall pay each respective Quarterly Incentive Payment to the OWNER on or before the thirtieth (30th) day of the month that follows the receipt by the City from the State of Texas of the Sales Tax for the previous calendar quarter within each Calendar Year each year in which the applicable Grant Criteria are met.
4. As a statutory requirement, all payments of Chapter 380 Grants are subject to the CITY's budget and reconciliation procedure.

C. **Maintenance of Books and Records.** The CITY shall maintain complete books and records showing ad valorem taxes received by the CITY from the Property, which books and records shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to Texas municipalities. Such books and records shall be available for examination by the duly authorized officers or agents of OWNER during normal business hours upon request made not less than five (5) business days prior to the date of the examination. The CITY shall maintain such books and records throughout the term of this Agreement and store the same for four (4) years thereafter.

VI.

Reports, Audits and Inspections

- A. **Annual Certification and Reports.** The OWNER shall certify in writing to the CITY that the OWNER is in compliance with the terms of this Agreement, and shall provide the CITY with reports and records reasonably necessary to demonstrate fulfillment of the performance criteria set forth in Article IV as follows:
1. **Certification.** OWNER shall complete and certify a 380 Grant Certification in a form substantially similar to that set forth in **Exhibit B**, which shall include the OWNER Threshold or Ongoing Documentation, as appropriate. Such

Documentation and Certification shall be submitted at the time the OWNER pays its respective Real Property Taxes.

2. **FTE Documentation.** The Certification form shall be accompanied by the following minimum reports and records to establish compliance with the minimum FTE requirements set forth in this Agreement:
 - a. A certified payroll list (or functional equivalent for contractors performing services on-site of development) submitted by January 31 of each year which includes a list of all Full-time Equivalent Employees employed by the Employer at the Property during the prior calendar year. The annual employment report must include the following information and must also include a certification verifying that the information provided is true and accurate:
 - i. Name of Reporting Entity
 - ii. Reporting Period
 - iii. Name of Each Employee.
 - iv. Position Title of Each Employee.
 - v. Average Number of Hours Worked Per Week by Each Employee during the Reporting Period.
 - vi. Actual Taxable Compensation Paid to Each Full-Time Employee during the Reporting Period (amount that will be reported in Box 1 of IRS Form W2 Wage & Tax Statement and/or 1099, as appropriate)
 3. **Sales Tax Reports.** The OWNER shall provide or cause to be provided to the City any required permission to access information filed with the State of Texas related to sales taxes collected and remitted to the State of Texas by the OWNER on the Property promptly upon request by the City to allow the City to verify the amount of Sales Tax Rebate to be paid to the OWNER under this Agreement. The City shall not be required to pay the Sales Tax Rebate until the City has received all permissions required to access such information, and the Sales Tax Rebate shall be calculated solely on sales tax receipts that can be verified based on records held by the State of Texas.
 4. **Additional Reports.** The, OWNER shall furnish CITY any additional records and information reasonably requested to support the Grant Criteria and the reports required by this Agreement. The OWNER shall further furnish the CITY with copies of or access to additional information reasonably required to verify the information set forth in the Threshold or Ongoing Documentation.
- B. **Right to Audit Books and Records.** CITY shall have the right to audit the books and records of the OWNER used in generating the reports listed in Article VI(A) above. CITY shall notify the OWNER in advance in writing of their intent to audit in order to allow the OWNER, as applicable, adequate time to make such books and records available (in no event shall the OWNER, as applicable, have less than five (5) business in order to make such books and records available).

- C. **Inspection.** At all times throughout the term of this Agreement, CITY shall have reasonable access to the Property upon providing at least 48 hours' written notice to the OWNER for the purpose of inspecting the Property to ensure that the Facility is designed, constructed and installed in accordance with the terms of this Agreement. Notwithstanding the foregoing, the CITY's inspection of the Property shall not interfere with the operation of the Property.

VII. Breach

- A. **Breach.** A breach of this Agreement may result in termination or modification of this Agreement as provided herein. The following conditions shall constitute a breach of this Agreement:
1. The OWNER fails to meet the performance criteria as specified in Article IV above for a period of two consecutive grant years.
 2. The OWNER falsely certifies that the performance criteria in the Threshold Documentation submitted to the CITY under Article VI has been met.
 3. CITY fails to timely make payments to the OWNER under the terms of this Agreement.
- B. **Notice of Breach.** Notwithstanding anything herein to the contrary, no Party shall be deemed to be in default under this Agreement until the passage of sixty (60) business days after receipt by such Party of notice of default from the other Party ("Cure Period"), which notice shall specify, in reasonable detail, the nature of the default. Upon the passage of the Cure Period without cure of the default, such Party shall be deemed to have defaulted for purposes of this Agreement; provided that, if the nature of the default is such that it cannot reasonably be cured within the Cure Period, the Party receiving the notice of default may during such Cure Period give the other Party written notice that it has commenced cure within the Cure Period and will diligently and continuously pursue a cure to completion as soon as reasonably possible, and such written notice together with diligent and continuous pursuit of the cure shall extend the Cure Period for up to an additional ninety (90) calendar days so long as the cure is being diligently and continuously pursued during such time; and provided further that, if the cure cannot be reasonably accomplished within the additional ninety (90) calendar day period but the applicable facts, circumstances, and progress establish that a cure will be obtained within a reasonable period of time following the expiration of the ninety (90) calendar day period, the time for cure will be extended for an additional period of time as mutually agreed by the Parties in writing (such agreement not to be unreasonably withheld). If a default is not cured within the applicable Cure Period, or any extension of the cure period described herein, then the non-defaulting Party may terminate this Agreement, pursue the remedies set forth in this Agreement, as well as any other remedies available in equity or law.
- C. **Repayment of Chapter 380 Grants.** In the event that the OWNER commits a breach of this Agreement according to Section VII.A(2), the OWNER shall pay back to the CITY the Chapter 380 Grant for the tax year for which false certification was submitted within

thirty (30) days of written demand by the CITY. There shall be no repayment obligation for any certification later determined to be substantively incorrect if OWNER relies in good faith on information received from third parties, including tenants and subtenants, as long as OWNER uses proper and reasonable due diligence and professional methods in collecting such information.

- D. **Tax Lien Not Impaired.** It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Texas Tax Code. Such lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the Property. Any such lien may be fully enforced pursuant to the provisions of the Code. For purposes of this Subsection, "property" refers to the Premises and Eligible Property described herein.

- E. **Limitations on Liability.** The CITY shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the CITY shall be limited to amounts recoverable under §271.153 of the Texas Local Government Code. The parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty or governmental immunity on the part of the CITY.

- F. **Personal Liability of Public Officials; No Debt Created.** No employee of the CITY, nor any councilmember or agent of the CITY, shall be personally responsible for any liability arising under or growing out of this Agreement. The Chapter 380 Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by the CITY. Under no circumstances shall the CITY's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

VIII.

Indemnification

OWNER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO OWNER'S ACTIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO OWNER OR OWNER'S AFFILIATE'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF OWNER OR OWNER'S AFFILIATE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF OWNER OR OWNER'S AFFILIATE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE

PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. OWNER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF OWNER OR OWNER'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT OWNER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING OWNER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, SHALL NOT BE AN INDEMNITY EXTENDED BY OWNER TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. OWNER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE OWNER SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ELECTED OFFICIALS PERMITTED BY LAW.

IX.
Notice

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail postage prepaid or by hand delivery:

OWNER:

Jiwon Jung
204 W. 31st. Street
Austin, TX 78705

With a copy to:

CITY: City of Manor
Attn: Economic Development Director
105 E. Eggleston Street
Manor, TX 78653
sjones@manortx.gov

With a copy to: The Knight Law Firm
Attn: Veronica Rivera
223 E. Anderson Ln.
Austin, TX 78752

X.
City Council Authorization

This Agreement was authorized by motion and vote of the City Council recorded in the minutes authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

XI.
Severability

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

XII.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested will be addressed to a subsequent purchaser or assignee of OWNER, shall include, but not necessarily be limited to statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the eligible grants and such other matters reasonably requested by the party(ies) to receive the certificates.

XIII.
Standing

OWNER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

XIV.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas without regarding to its conflict of laws provisions. Venue for any action under this Agreement shall be the State's District Court of Travis County, Texas. This Agreement is performable in Travis County, Texas.

XV.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, Act of God, fire, pandemic, material or labor shortage, strike, civil unrest, governmental action, or any other reason beyond the reasonable control of the respective party, or other casualty or event of a similar nature.

XVI.
No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified or supplemented only by an instrument or instruments in writing executed by the parties.

XVII.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XVIII.
Successors and Assigns; Independent Contractor Status

The parties to this Agreement each bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. No successor, executor, administrator or assign is valid in the place of the parties to this Agreement without the written consent of CITY and such consent shall not be unreasonably withheld.

Notwithstanding the foregoing, the City Council hereby agrees and approves Owner assigning this Agreement to BB Boyce, LLC, a Texas limited liability company with respect to all of the Property, so long as the Owner assigns this Agreement in writing and provides the City Manager thirty (30) day's prior written notice of any such assignment. Upon receipt of the executed assignment between Owner and BB Boyce, LLC by the City Manager, the Owner shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement.

OWNER shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Contractor hereby certifies that it shall be and is in compliance with all such regulations, laws and requirements. This Agreement does not create a partnership nor employment relationship with the City.

XIX.
Counterparts

This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all of the parties hereto have executed at least one counterpart.

XX.
No Third-Party Beneficiaries

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree that: (1) the agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or the OWNER; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or the OWNER.

XXI.
Remedies

Except as provided in this Agreement, no right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this agreement.

XXII.
Term and Termination

A. A. **Term.**

Unless terminated earlier as provided herein, this Agreement shall terminate upon the earliest occurrence of any one or more of the following: (1) the written agreement of the Parties; or (2) The Agreement's Expiration Date. The Expiration Date shall be the date that the Maximum Grant Amount is paid to OWNER; provided that the following shall survive termination of this Agreement for any reason: ; Article III; Article V; Article VI.B; Article VII; Article VIII; Article XIII, Article XIV, Article XV, Article XVI, Article XVIII, Article XX, and Article XXI.

B. **Termination.**

C. During the term of this Agreement, should the OWNER commit a breach of this Agreement according to the Sections VII.A(1) or (2), the CITY may terminate this Agreement, subject to Section VII.B. In addition, the CITY may terminate the Agreement in the event that the OWNER fails to obtain a Certificate of Occupancy for the Project by December 31, 2027 by giving thirty (30) days' written notice to the OWNER.

XXVII.
Statutory Verifications

- D. In accordance with Chapter 2270, Texas Government Code, the CITY may not enter into a contract with a OWNER for goods and services unless the contract contains a written verification from the OWNER that it: (a) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this contract on behalf of the OWNER verifies that the OWNER does not boycott Israel and will not boycott Israel during the term of this Agreement.
- E. To the extent the Agreement constitutes a contract for goods or services within the meaning of Section 2274 of the Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, the OWNER represents that the OWNER and all wholly owned subsidiary, majority-owned subsidiary, parent OWNER and affiliates of OWNER do not, and will not for the duration of this agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. Further, the OWNER represents that the OWNER and all wholly owned subsidiary, majority-owned subsidiary, parent OWNER and affiliates of OWNER do not, and will not for the duration of this agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association. The phrase "Discriminates Against a Firearm Entity or Firearm Trade Association" as used in this paragraph have the meanings assigned to the phrase "Discriminate Against a Firearm Entity or Firearm Trade Association" in Section 2274.001(3) of the Texas Government Code, as amended.
- F. To the extent the Agreement constitutes a contract for goods or services within the meaning of Section 2274 of the Texas Government Code, as amended, solely for purposes of compliance with therewith, and subject to applicable Federal law, the OWNER represents that neither the OWNER nor any wholly owned subsidiary, majority-owned subsidiary, parent OWNER or affiliate of OWNER (i) boycotts energy companies or (ii) will boycott energy companies through the term of this Agreement. The phrase "Boycott Energy

Companies” as used in this paragraph have the meanings assigned to the phrase “Boycott Energy OWNER” in Section 809.001 of the Texas Government Code, as amended.

- G. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, OWNER represents that OWNER nor any wholly owned subsidiary, majority-owned subsidiary, parent OWNER or affiliate of OWNER is a OWNER listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code. Further, OWNER represents that OWNER nor any wholly owned subsidiary, majority-owned subsidiary, parent OWNER or affiliate of OWNER is a OWNER listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.
- H. Form 1295. Texas law and the City requires that business entities, as defined in Texas Government Code, Section 2252.908, who contract with the City complete the on-line of Form 1295 "Certificate of Interested Parties" as promulgated by the Texas Ethics Commission (<https://www.ethics.state.tx.us/filinginfo/1295/>). Form 1295 is also required for any and all contract amendments, extensions or renewals. Prior to any payment to Contractor hereunder, Contractor shall provide proof of submission to the City Secretary that the appropriate Form 1295 documentation has been submitted.

XXVIII.

Interpretation

The parties to this Agreement have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and neither more for or against any party.

XXIX.

Effective Date

This Agreement shall be effective on the _____ day of _____, 20____ (the “Effective Date”).

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year written above.

JIWON JUNG

By: _____

WITNESS:

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of October, 2024.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

MY COMMISSION EXPIRES:

NOTARY'S PRINTED NAME

CITY OF MANOR, TEXAS

By: _____

CITY MANAGER

Date: _____

ATTEST:

CITY SECRETARY

APPROVED AS TO FORM:

By: _____

CITY ATTORNEY

Date: _____

THE STATE OF TEXAS

§
§
§

CITY OF MANOR, TEXAS

COUNTY OF TRAVIS

Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF MANOR, TEXAS**, a municipal corporation of Travis and Travis Counties, Texas, and as the _____ thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of October, 2024.

NOTARY PUBLIC IN AND FOR

THE STATE OF TEXAS

MY COMMISSION EXPIRES:

NOTARY'S PRINTED NAME

EXHIBIT A

The Property

EXHIBIT B

**CITY OF MANOR
CHAPTER 380 AGREEMENT (THE “AGREEMENT”) GRANT REPORT FORM**

Chapter 380 Grant Certification

PROJECT STATUS – THRESHOLD GRANT CRITERIA (provide in Year 1 only)

Certificate of Occupancy for the Project issued _____.

Business Operations commenced on _____.

Provide documentation of expenditure of at least \$4.5 million in Real Property Improvements on the Property

Documentation acceptable to the City establishing the number of FTE’s employed at the Facility by the OWNER.

Please provide each of the following documents as an attachment to this Certification:

- Proof of payment of the ad valorem and business personal property taxes.
- Documentation acceptable to the City establishing the number of FTE’s employed at the Facility by the OWNER.

CERTIFICATION

I certify that to the best of my knowledge and belief, the information and attached documents provided in this Chapter 380 Grant Certification are true and accurate and in compliance with the terms of the Chapter 380 Agreement with the City of Manor. I further certify that to the best of my knowledge and belief, I am have met the requirements of the Threshold Grant Criteria, as that terms is defined in the Agreement applicable to the mixed use building project.

Printed Name and Title of Certifying Officer

Signature of Certifying Officer

Date

Telephone Number

Email Address

NOTE: This Chapter 380 Grant Certification shall be filed with the City prior to the payment of the Chapter 380 Grant.

EXHIBIT C

CONSENT TO ASSIGNMENT AND ASSIGNMENT

THIS CONSENT TO ASSIGNMENT AND ASSIGNMENT (“Assignment”) is made in connection with the Chapter 380 Agreement Project – 107 Boyce Street Mixed-Use Development entered into by and between **JIWON JUNG** and **THE CITY OF MANOR, TEXAS**, a Texas municipal corporation, effective the ___ day of _____, 2025 (the, “107 Boyce 380 Agreement”), regarding the Property, Real Property Improvements, and Facilities, as defined in the 107 Boyce 380 Agreement (the “Property”).

R E C I T A L S

A. Whereas, Jiwon Jung (the, “Assignee”) as heretofore sold, conveyed, and transferred all right and title in the Property to BB Boyce, LLC, a _____ limited liability company (the, “Assignees”); and

B. Whereas, the Property is the subject of the rights, benefits and obligations under the 107 Boyce 380 Agreement (the, “380 Obligations”); and

C. Whereas, The Assignor and Assignees have intended that the 380 Obligations be assigned to the Assignees and the Assignees have accepted the assignment of the Development Rights; and

D. Whereas, the City Council of the City of Manor, Texas, has consented to this assignment so long as the assignment has been consummated before the ___ day of _____, 20__ .

The undersigned, does hereby consent and agree as follows:

1. The City of Manor, Texas, consents to the assignment and transfer by Assignor to Assignees of a all rights, title, interest and benefits of Assignor under the 107 Boyce 380 Agreement.
2. Assignor assigns to Assignees all rights, title, interest, and benefits of Assignor under the 107 Boyce 380 Agreement.
3. Assignees accepts all rights, title, interest, and benefits of Assignor under the 107 Boyce 380 Agreement.
4. Nothing herein is intended to change any other terms or provisions of the 107 Boyce 380 Agreement, which shall remain in full force and effect.

5. This Assignment may be executed in any number of counterpart copies, each of which counterparts shall be deemed an original for all purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Assignment is executed and delivered to be effective the _____ day of _____, 20____.

CITY OF MANOR, TEXAS

By:

—

Name: _____

Title:

—

ASSIGNOR:

JIWON JUNG

ASSIGNEE:

BB Boyce, LLC

a _____ limited liability company

By:

—

Name: _____

Title:

—

—

