

THE STATE OF TEXAS

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**Chapter 380 Grant Agreement
Project – Manor Downs Commerce Center**

COUNTY OF TRAVIS

THIS CHAPTER 380 GRANT AGREEMENT – Project – Manor Downs Logistics Center (hereinafter, this “Agreement”) is executed by and between **DG MANOR DOWNS PROPERTY OWNER, L.P.**, a Delaware limited partnership (including its successors and assigns) duly authorized to do business in the State of Texas, (hereafter referred to as “COMPANY”) and the **CITY OF MANOR, TEXAS**, a home-rule city and municipal corporation of Travis County, Texas (hereinafter, the “CITY”)(CITY and COMPANY hereinafter sometimes referred to individually as a “Party” and collectively as “Parties”).

WITNESSETH:

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 Manor under the terms and conditions of this Agreement; and

WHEREAS, the CITY has determined that the COMPANY 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 COMPANY owns/leases the following described property: approximately 146.920 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 COMPANY made application to the CITY for an economic incentive related to the construction of four buildings that will total at a minimum 894,650 square feet square feet on the Property, with a COMPANY option to construct two additional buildings that will total an additional 487,944 square feet on the Property (hereinafter, the “Facilities,” and further defined herein); and

WHEREAS, the COMPANY’s application to the City provides that the anticipated construction cost (exclusive of land cost) of Phase 1 of the Facilities, as defined herein, shall be approximately \$64,323,397 and that the anticipated construction cost (exclusive of land cost) of the optional Phase 2 of the Facilities, as defined herein, shall be approximately \$36,238,046; and

WHEREAS, the construction of the Facilities, the relocation of the Company 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 COMPANY 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 COMPANY, 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 COMPANY’S business operating on the Property.
- B. **“Calendar Year”** means the twelve month period of time that begins on January 1st and ends on December 31st of the same numbered year.
- C. **“Chapter 380 Grant”** is defined as the economic incentive payment further described in Article V, not to exceed the Maximum Grant Amount.
- D. **“Certificate of Occupancy”** means the final certificates of occupancy issued by the CITY for the shell and core buildings of the Facilities.
- E. **“Eligible Property”** is defined as the Property, all real property improvements affixed to the Property, and business property located thereon.
- F. **“Facilities”** means four buildings that total a minimum of 894,650 square feet (hereinafter sometimes “Phase 1”), and, at the COMPANY’S option, two additional buildings that total a minimum of 487,944 square feet (hereinafter sometime “Phase 2”), 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.
- G. **“Grant Criteria”** is defined as the criteria set forth in Article IV that the COMPANY must meet to receive the Chapter 380 Grant defined in Article V.
- H. **“Maximum Grant Amount”** shall mean the total amount of payments paid to COMPANY under this Agreement, whether by Real Property Tax Rebate, reimbursement of wastewater impact fees, or combination thereof, in the schedule provided in Section V.A.1 herein and in an amount not to exceed \$5,693,953 for Phase 1, and \$8,907,771 for

Phase 1 and Phase 2 combined. The terms, “Phase 1,” and, “Phase 2,” are defined and described in greater detail in Section IV.A hereinbelow.

- I. **“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.B.-D.; and (2) proof of payment ad valorem taxes and wastewater impact fees actually paid. The CITY may reasonably request additional records to support the information shown in the Ongoing Documentation and compliance with the applicable Grant Criteria.
- J. **“Ongoing Grant Criteria”** is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants after Year 1, which are set forth in Section IV.A.2.
- K. **“Premises”** are defined as the real property (land and improvements) located on the Property.
- L. **“Project”** is defined to mean the Facilities, together with all other accessory and permitted uses on the Property, upon which the Business Operations will be conducted.
- M. **“Property”** is defined as that certain 146.920 acre tract, being more particularly described in **Exhibit A**.
- N. **“Annual Incentive Payment(s)”** means the quarterly Real Property Tax Rebate payments for the four calendar quarters in each of the three (3) full Calendar Years that follow the first Real Property Tax Rebate payment.
- O. **“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.
- P. **“Real Property Tax Rebate”** means the percentage of Real Property Taxes paid by the COMPANY and actually received by the CITY and paid to the COMPANY pursuant to Section V.A.1.
- Q. **“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.
- R. **Intentionally Omitted.**
- S. **Intentionally Omitted.**
- T. **“Threshold Documentation”** is defined as copies of the following documents required for payment of the Chapter 380 Grant for each completed building of the Facilities: (1) proof of compliance with Section IV.B.-D.; (2) proof of the issuance of a Building Core and Shell Certificate of Occupancy for each building of the Facilities demonstrating that the building core and shell was constructed and completed on the Property per Section IV.A.1; (3) proof of construction hard costs for the completed core and shell of the building; and (4) the Threshold 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.

- U. **“Threshold Grant Criteria”** is defined as the criteria the COMPANY is required to meet for payment of Chapter 380 Grants to be paid for each completed building of the Facilities, which are set forth in Section IV A. 1.
- V. **“Year 1”** is defined as the tax year following the date on which each building for the Facilities is constructed and completed on the Property, and a Certificate of Occupancy is issued for the shell and core of each such building.

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

IV.
Performance Criteria

- A. **Grant Criteria.**

1. **Threshold Grant Criteria.** The following events must occur for the COMPANY to receive the Chapter 380 Grant described in Article V:

- a. The COMPANY completes construction of a building of the Facilities and a Certificate of Occupancy is issued for such building. The Parties agree that COMPANY intends to construct the Facilities one building at a time and that the COMPANY shall be entitled to receive the Chapter 380 Grant on a pro rata basis of the square footage of the building upon the completion and issuance of a Certificate of Occupancy for the constructed and completed core and shell of each building of the Facilities, and upon the schedule described in Article V. Completion of the first building of the Facilities is anticipated to occur on or before 18 months after CITY approval of a building permit for the first building of the Project. Completion of all four buildings comprising Phase 1 of the Facilities is anticipated to occur on or before July 2028 (“Phase 1”).
- b. Additionally, the COMPANY, at its sole option, may elect to construct the two additional buildings comprising Phase 2 of the Facilities during the term of this Agreement. The Parties agree that in the event COMPANY elects to construct Phase 2 of the Facilities, COMPANY intends to construct Phase 2 one building at a time and that COMPANY shall be entitled to receive the Chapter 380 Grant on a pro rata basis of the square footage of the building upon the completion and issuance of a Certificate of Occupancy for each building of Phase 2 of the Facilities, and upon the schedule described in Article V. In the event the COMPANY determines to construct the two additional buildings comprising Phase 2 of the Facilities, completion of the two additional buildings comprising Phase 2 of the Facilities is anticipated to occur on or before February 2030. In the event the COMPANY determines not to construct the two additional buildings comprising Phase 2 of the Facilities, COMPANY shall provide written notice of its decision to the CITY. Phase 2 construction not completed by February 28, 2031, will not be eligible for Chapter 380 Grant (“Phase 2”).
- c. The COMPANY is in compliance with Sections IV.B-D.

2. **Ongoing Grant Criteria.** After the first Chapter 380 Grant payment made to the COMPANY following completion of a building, the COMPANY must comply with the following requirements for each year in which the COMPANY seeks a Chapter 380 Grant payment for such building:

- a. The COMPANY is in compliance with Section IV.B-D.

3. Square Footage and Construction Cost of Facilities by Building and Phase. The Parties agree that the minimum square footages and construction costs for the Facilities shall be as follows:

Building	Phase	Square Footage	Construction Cost
Building 3	Phase 1	483,991 SF	\$31,954,043
Building 4	Phase 1	190,663 SF	\$14,218,906
Building 5	Phase 1	87,998 SF	\$7,629,553
Building 6	Phase 1	131,998 SF	\$10,520,896
	SUB TOTAL:	894,650 SF	\$64,323,397
Building 1	Phase 2	285,768 SF	\$20,673,597
Building 2	Phase 2	202,176 SF	\$15,574,440
	SUB TOTAL:	487,944 SF	\$36,248,036
	GRAND TOTAL:	1,382,594 SF	\$100,571,433

Construction of Phase 2 of the Facilities shall be at the option of COMPANY, per Section IV.A.1.b.

- B. 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.
- C. The COMPANY shall not allow the ad valorem taxes or business personal property owed to CITY or the Manor Independent School District (hereinafter, the “District”) on any real property or business personal property owned by COMPANY 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 COMPANY 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 COMPANY 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.
- D. The COMPANY covenants and certifies that the COMPANY 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 COMPANY is convicted of a violation under 8 U.S.C. Section 1324a (f), the COMPANY 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 unappealable conviction of the COMPANY, provided, however, the COMPANY shall not be liable for a violation by a subsidiary, affiliate, or franchisee of the COMPANY or by a person with whom the COMPANY contracts including, but not limited to, all tenants and subcontractors.

V.
Economic Development Grants

A. Chapter 380 Grant Payments For Each Completed Building.

1. Subject to the terms of this Agreement, and COMPANY'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 COMPANY the following Chapter 380 Grant payments for each completed building, commencing in Year 1 for such building and continuing through year 13, provided that the Chapter 380 Grant will cease when the Maximum Grant Amount has been reached:

- Years 1 - 3:
 - An amount equal to 100% of the Real Property Taxes received by the CITY on a quarterly basis.
- Years 4-13:
 - An amount equal to 50% of the Real Property Taxes received by the CITY on an annual basis.

2. The CITY shall pay the Real Property Tax Rebate Amount annually and quarterly as provided in this Section V. To be eligible to receive the Chapter 380 Grant in the years following Year 1, the Ongoing Grant Criteria must be met each year. The COMPANY will not be paid the 380 Grant payment for those tax years in which the Ongoing Grant Criteria are not met.

3. COMPANY shall annually provide the CITY the Documentation described in Article VI. 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 COMPANY has notified the CITY that the taxes have been paid; provided that the applicable Grant Criteria as set forth in Article IV have been met.

B. Payment of Chapter 380 Grant For Reimbursement of Wastewater Impact Fees.

1. Up to \$345,288 of the Maximum Grant Amount shall be reimbursed by the City of Manor to the COMPANY within 60 days of submittal of written evidence of payment of actual wastewater impact fees received by the City of Manor for each building of the Facilities.
- C. **Payment of Chapter 380 Grants Subject to CITY’S Budget and Reconciliation Procedure.**
1. As a statutory requirement, all payments of Chapter 380 Grants are subject to the CITY’S budget and reconciliation procedure.
- D. **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 COMPANY 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 COMPANY shall certify in writing to the CITY that the COMPANY 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.** COMPANY shall complete and certify a 380 Grant Certification in a form substantially similar to that set forth in **Exhibit B**, which shall include the COMPANY Threshold or Ongoing Documentation, as appropriate. Such Documentation and Certification shall be submitted at the time the COMPANY pays its respective Real Property Taxes.
 2. **Additional Reports.** The COMPANY shall furnish CITY any additional records and information reasonably requested to support the Grant Criteria and the reports required by this Agreement. The COMPANY 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 COMPANY related to the Eligible Property. CITY shall notify the COMPANY in advance in writing of their intent to audit in order to allow the COMPANY,

as applicable, adequate time to make such books and records available (in no event shall the COMPANY, 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 COMPANY for the purpose of inspecting the Property to ensure that the Facilities are 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 COMPANY fails to meet the performance criteria as specified in Article IV above for a period of two consecutive grant years.
 2. The COMPANY 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 COMPANY 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 COMPANY commits a breach of this Agreement according to Section VII.A.2, the COMPANY 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 COMPANY relies in good faith on information received from third parties, including tenants and subtenants, as long as COMPANY 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

COMPANY 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 COMPANY’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 COMPANY OR COMPANY’S AFFILIATE’S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF COMPANY OR COMPANY’S AFFILIATE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE,

EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF COMPANY OR COMPANY'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. COMPANY SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF COMPANY OR COMPANY'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT COMPANY'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 COMPANY 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 COMPANY 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. COMPANY 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 COMPANY 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:

COMPANY: DG Manor Downs Property Owner LP
Attn: Tim Kraftson
Development Manager-Central Region
Dalfen Industrial

17304 Preston Road, Suite 550
Dallas, Texas 75252

With a copy to: DG Manor Downs Property Owner LP
Attn: Joseph Walker
General Counsel and Chief Compliance Officer
Dalfen Industrial
17304 Preston Road, Ste. 550
Dallas, Texas 75252

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 COMPANY, 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

COMPANY, 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 COMPANY 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.

COMPANY 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. COMPANY 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 COMPANY; 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 COMPANY.

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. 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 COMPANY; 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.

During the term of this Agreement, should the COMPANY 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 COMPANY fails to obtain a Certificate of Occupancy for each building of Phase I by July 31, 2028 and by February 28, 2031, for Phase II, if applicable.

**XXVII.
Statutory Verifications**

- A. In accordance with Chapter 2270, Texas Government Code, the CITY may not enter into a contract with a COMPANY for goods and services unless the contract contains a written verification from the COMPANY 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 COMPANY verifies that the COMPANY does not boycott Israel and will not boycott Israel during the term of this Agreement.
- B. 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 COMPANY represents that the COMPANY does 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 COMPANY represents that the COMPANY does 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.
- C. 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 COMPANY represents that the COMPANY does not (i) boycott energy companies and (ii) will not 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 Company” in Section 809.001 of the Texas Government Code, as amended.
- D. 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, COMPANY represents that COMPANY nor

any wholly owned subsidiary, majority-owned subsidiary, parent COMPANY or affiliate of COMPANY is a COMPANY listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code. Further, COMPANY represents that COMPANY nor any wholly owned subsidiary, majority-owned subsidiary, parent COMPANY or affiliate of COMPANY is a COMPANY listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

- E. 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.
Effective Date

This Agreement shall be effective on the ____ day of _____, 2025 (the "Effective Date").

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

DG MANOR DOWNS PROPERTY OWNER, L.P.,
a Delaware limited partnership

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2025, by _____, _____ of DG Manor Downs Property Owner, L.P., a Delaware limited partnership, on behalf of said partnership.

(SEAL)

Notary Public, State of _____

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
March, 2023.

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 for each completed building)

Certificate of Occupancy for Building ____ of the Facilities issued on _____ . Square footage for Building ____ of the Facilities is _____ .

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

- Proof of payment of the ad valorem taxes.
- Proof of compliance with Threshold Grant Criteria, i.e., affidavit of compliance.

For Years Subsequent to Year 1 for each completed building, provide

1. Proof of payment of ad valorem taxes;
2. Proof of Compliance with Ongoing Grant Criteria (Sections IV B.-D. of Agreement), i.e. affidavit of compliance.

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 have met the requirements of the Threshold Grant Criteria, as that term is defined in the Agreement.

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 for each completed building of the Facilities prior to the payment of the Chapter 380 Grant for such completed building.