

**CHAPTER 380 AGREEMENT BY AND BETWEEN**  
**THE CITY OF WYLIE, TEXAS AND**  
**HILLSIDE GRILL, LLC**

This **CHAPTER 380 AGREEMENT** (“Agreement”) is entered into by and between **Hillside Grill, LLC**, a Texas Limited Liability Company (“Company”) and the **CITY OF WYLIE, TEXAS**, a Texas home-rule municipality (“City”).

**WITNESSETH:**

**WHEREAS**, the City Council of the City of Wylie, Texas (“City Council”) has investigated and determined that it is in the best interest of the City and its citizens to encourage programs, including programs for making loans and grants of public money to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380, Texas Local Government Code, as amended, (“Chapter 380”);

**WHEREAS**, Company has entered into a contract to acquire the tract of property located at 2600 W. FM 544, Wylie, Collin County, Texas 75098, which property is more fully described and/or depicted on the attached **Exhibit “A”** (the “Property”);

**WHEREAS**, Company proposes to remodel the restaurant building currently situated on the Property (the “Restaurant”) in accordance with the Plans hereinafter defined (the “Project”). The total cost of completing the Project, net of any costs related to acquiring the Property, shall be not less than One Million One Hundred Thousand Dollars (\$1,100,000.00);

**WHEREAS**, upon completion of the Project, Company shall obtain a permanent Certificate of Occupancy from the City for the remodeled Restaurant within one (1) year after the Effective Date of this Agreement (the “Performance Deadline”);

**WHEREAS**, Company shall have the right to extend the Performance Deadline one (1) time for a period of ninety (90) additional days by providing written notice thereof to City prior to the Performance Deadline;

**WHEREAS**, the City Council has investigated and determined that Company meets the criteria for providing the assistance described in this Agreement, pursuant to Chapter 380, since the project will promote local economic development and stimulate business and commercial activities in the City; and

**WHEREAS**, the City is willing to provide Company with economic assistance on the terms and subject to the conditions stated herein, and Company is willing to accept the same subject to all terms and conditions contained in this Agreement.

**NOW, THEREFORE**, in consideration of the covenants and conditions contained in this Agreement, the City and Company agree as follows:

1. Findings Incorporated. The findings set forth above are made a part of this Agreement as if set forth herein verbatim.

2. Company Obligations. Company shall comply with the following requirements (collectively, the “Company Obligations”):

a) Year One Company Obligations:

i. Company shall supply documentation to the City that the Company has purchased and taken title to the Property for a purchase price of at least Two Million Two Hundred Thousand Dollars (\$2,200,000.00) on or before the Performance Deadline.

ii. Company shall complete the plans and specifications for the Project (the “Plans”) and submit them to the City for approval prior to commencement of construction on or before the Performance Deadline.

iii. Company shall commence construction of the Project on or before the Performance Deadline.

iv. Company shall complete construction of the Project in substantial accordance with the Plans and obtain from the City a permanent Certificate of Occupancy for the remodeled Restaurant on or before the Performance Deadline.

v. Company shall supply documentation to the City that the cost of constructing the Project, net of any costs related to acquiring the Property, was at least One Million One Hundred Thousand Dollars (\$1,100,000.00) on or before the Performance Deadline.

vi. Company shall supply documentation to the City that the Company has paid when due all taxes assessed to the Company, including, but not limited to, those related to the Restaurant and/or the Project, on or before the Performance Deadline.

b) Year Two Company Obligations:

i. Company shall supply documentation to the City that the Restaurant has remained open and continually operating from the date the City issues a permanent Certificate of Occupancy for the remodeled Restaurant (the “CO Date”) through the one (1) year anniversary of the CO Date.

ii. Company shall supply documentation to the City that the Company has paid when due all taxes assessed to the Company, including, but not limited to, those related to the Restaurant and/or the Project, through the one (1) year anniversary of the CO Date.

3. City Obligations. Subject to the terms and conditions of this Agreement and provided Company is not in default of this Agreement, the City shall comply with the following (the “City Obligations”):

- a) Within thirty (30) days after City receives documentation confirming that Company has satisfied all of the Year One Company Obligations set forth in Section 2(a) above, the City shall pay to Company an amount equal to One Hundred Thousand Dollars (\$100,000.00).
- b) Within thirty (30) days after City receives documentation confirming that Company has satisfied all of the Year Two Company Obligations set forth in Section 2(b) above, the City shall pay to Company an amount equal to One Hundred Thousand Dollars (\$100,000.00).

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

- a) General Event of Default. Failure of the Company to comply with or to perform any term, obligation, covenant or condition contained in this Agreement, or failure of the Company to comply with or to perform any term, obligation, covenant or condition contained in any other agreement by and between the Company and the City is an Event of Default.
- b) False Statements. Any warranty, representation or statement made or furnished to the City by or on behalf of the Company under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished, is an Event of Default.
- c) Insolvency; Tax Delinquency. The Company's failure to pay taxes, fees, utility payments and other financial obligations owed to the City, dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of a party's existence as a going business, insolvency, appointment of receiver for any part of the Company's property, any assignment for the benefit of creditors of the Company, any type of creditor workout for the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company is an Event of Default.

5. Effect of an Event of Default. On the occurrence of an Event of Default, the non-defaulting party shall give written notice to the other party of the Event of Default, and the defaulting party shall have three (3) days to cure said default. In the event said default is not cured within the prescribed time period, the non-defaulting party shall have the right to terminate this Agreement. In the event the Company defaults and fails to cure said default within the prescribed time period, the City shall be entitled to take any of the following actions, as its sole and exclusive remedies: (i) waive the default; (ii) immediately terminate this Agreement by providing written notice thereof to Company; (iii) if Company has received any payments from the City under this Agreement, then Company shall refund to the City the full amount of all such payments; or (iv) exercise any other remedies available to the City at law or equity. In the event the City defaults and fails to cure said default within the prescribed time period, the Company shall be entitled to take one of the following actions, as its sole and exclusive remedy: (i) waive the default; (ii) immediately terminate this Agreement by providing written notice thereof to the City; or (iii) seek specific performance of this Agreement.

6. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via email or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee, provided that notice given by U.S. mail return receipt shall be deemed to have been received upon deposit with the postal service. For purposes of notice, the addresses of the parties shall be as follows:

**If to the City:** City of Wylie, Texas  
Attention: City Manager  
300 Country Club Rd., Building 100, 1st Floor  
Wylie, Texas 75098  
Telephone: 972-516-6010  
Email: chris.holsted@wylietexas.gov

Copy to: Abernathy, Roeder, Boyd & Hullett, P.C.  
Attention: G. Randal Hullett  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Telephone: (214) 544-4000  
Email: rhullett@abernathy-law.com

**If to Company:** \_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Copy to: \_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

7. Verification and Compliance. The Company will allow the City to audit, if deemed necessary by the City, all of the Company's records, documents, agreements and other instruments in furtherance of the following purposes to the extent such documents reasonably relate to the matters herein: (i) to ensure the Company's compliance with the affirmative covenants set forth in this Agreement; (ii) to determine the existence of an Event of Default under the terms of this Agreement; and/or (iii) to ensure compliance with any other terms and conditions set forth herein or in any related documents. The City will provide the Company with written notice of any request for an audit and

shall cooperate with the Company to schedule audit activities during the Company's normal business hours so as to minimize disruption to the Company's normal business operations.

8. Limitation on Liability; Indemnity. It is understood and agreed that the Company and the City, in satisfying the conditions of this Agreement, have acted independently, and that the City assumes no responsibilities or liabilities to third parties in connection with these actions. THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND REPRESENTATIVES FROM ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER ASSERTED BY A THIRD PARTY AND ARISING OUT OF THE COMPANY'S PERFORMANCE OF THE CONDITIONS AND/OR OBLIGATIONS UNDER THIS AGREEMENT.

9. Miscellaneous Provisions.

- a) Binding Agreement. This Agreement shall constitute a valid and binding agreement by and between the City and Company.
- b) Savings/Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances, or affect any other provision hereof. It is the intention and agreement of the parties to this Agreement that each such illegal, invalid or unenforceable provision shall be amended by the parties hereto to the extent necessary to make it legal, valid and enforceable while achieving the same objective of such provision, or, if that is not possible, by substituting therefore another provision that is legal, valid and enforceable and achieves the same objectives (or, if such provision cannot be amended or a provision substituted therefore in a manner that is legal, valid and enforceable and achieves the same objectives, then such provision shall be amended or a new provision substituted therefore that achieves as closely as possible the same objectives or economic position as the illegal, invalid or unenforceable provision, irrespective of whether such amendment or substituted provision is materially different than the illegal, invalid or unenforceable provision).
- c) Default. Notwithstanding any provision in this Agreement to the contrary, Company's and the City's only liability for breaching any provision of this Agreement shall be the remedies expressly set forth in this Agreement.
- d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas. In the event of a lawsuit

brought pursuant to this Agreement, exclusive venue shall lie in Collin County, Texas.

- f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- h) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- i) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date of this Agreement.
- j) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- k) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.
- l) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- m) Immunity. It is expressly understood and agreed that, in the execution and performance of this Agreement, the City has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

- n) Assignment. This Agreement or any part thereof shall not be assigned or transferred by any party without the prior written consent of the other party.
  
- o) Undocumented Workers. The Company represents and certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code. If during the Term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a(f), the Company shall repay to the City an amount equal to all payments tendered to the Company under this Agreement and any other funds received by the Company from the City under this Agreement plus interest, at the rate of four percent (4%), not later than the 120th day after the date the City notifies the Company of the violation.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement and caused this Agreement to be effective on the \_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”).

**ATTEST:**

**CITY OF WYLIE, TEXAS**

By: \_\_\_\_\_  
Stephanie Storm, City Secretary

By: \_\_\_\_\_  
Chris Holsted, City Manager

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

BEFORE ME, the undersigned authority, on this day personally appeared CHRIS HOLSTED, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **CITY OF WYLIE, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public, State of Texas



**COMPANY:**

**Hillside Grill, LLC,**  
a Texas Limited Liability Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN     §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of **Hillside Grill, LLC**, a Texas Limited Liability Company, known to me to be one of the persons whose names are subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of said company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "A"**  
**DESCRIPTION AND/OR DEPICTION OF THE PROPERTY**

Legal Description: WOODBRIDGE CENTRE PHASE I ADDITION, BLK B, LOT 10