

ORDINANCE NO. 17-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HELOTES, TEXAS (THE “CITY”) APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY, THE CITY OF HELOTES ECONOMIC DEVELOPMENT CORPORATION (THE “EDC”), AND CSDRE, L.L.C. AND SLIM TEXAS, L.L.C. (THE “DEVELOPER”) FOR THE PURPOSE OF SETTING FORTH THE TERMS AND OBLIGATIONS BETWEEN THE CITY, EDC, AND THE DEVELOPER WITH RESPECT TO THE PROVISION OF SALES AND PROPERTY TAX GRANTS FOR THE DEVELOPMENT AND OPERATION OF A SLIM CHICKENS RESTAURANT LOCATED WITHIN THE CORPORATE CITY LIMITS; AUTHORIZING MAYOR THOMAS A. SCHOOLCRAFT TO EXECUTE SAID DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY COUNCIL; AUTHORIZING THE CITY ADMINISTRATOR TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE PROVISIONS OF THIS ORDINANCE; INCORPORATING RECITALS; PROVIDING FOR SEVERABILITY; REPEALING ANY OTHER CODE PROVISIONS, ORDINANCES, OR PARTS OF ORDINANCES, AND OTHER PROVISIONS IN CONFLICT HEREWITH; AND ADOPTING AN EFFECTIVE DATE.

Whereas, the City of Helotes, Texas (the “City”) desires to ensure that the growth and development which occurs within the corporate limits of the City is regulated and controlled in such a manner that said growth is beneficial to the public health, safety, and welfare; and

Whereas, CSDRE, L.L.C. and Slim Texas, L.L.C. intends to develop and operate a Slim Chickens Restaurant within the City of Helotes; and

Whereas, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State’s economy and the elimination of unemployment or underemployment; and

Whereas, pursuant to Chapter 380 of the Texas Local Government Code (“Chapter 380”), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the municipality; and

Whereas, the aforementioned negotiations have been memorialized in this Agreement between the City, EDC, and the Developer.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HELOTES, TEXAS THAT:

Section One. Approval. The Agreement, attached hereto as Attachment A, between the City, EDC, and the Developer (collectively referred to as the “Parties”) setting forth the Agreement terms and obligations of the Parties with regard to the development is hereby approved.

Section Two. Authorization. Mayor Thomas A. Schoolcraft is authorized to execute the Agreement on behalf of the City Council of the City of Helotes, Texas.

Section Three. Authorization. The City Administrator is authorized to take all necessary steps to implement the provisions of this Ordinance.

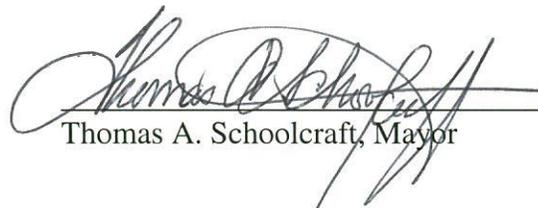
Section Four. Recitals. The legislative findings referenced above are hereby adopted.

Section Five. Severability. Should any article, section, part, paragraph, sentence, phrase, clause, or word of this Ordinance, or any appendix or exhibit thereof, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provisions herein continue to be held unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

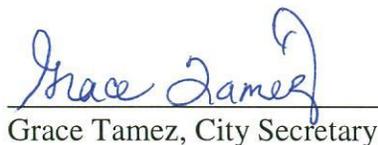
Section Six. Repealer. All Code provisions, ordinances, and other provisions in conflict with the provisions of this Ordinance are hereby repealed.

Section Seven. Effective Date. This Ordinance shall become effective upon passage by the City Council of the City of Helotes, Texas.

PASSED and APPROVED this 26th day of JANUARY 2017.


Thomas A. Schoolcraft, Mayor

ATTEST:


Grace Tamez, City Secretary



STATE OF TEXAS

§

Economic Development Agreement

§

COUNTY OF BEXAR

§

This Chapter 380 Economic Development Agreement (the “Agreement”) is made by and between the City of Helotes, Texas (the “City”), a Texas Municipal Corporation, the City of Helotes Economic Development Corporation (the “EDC”), and CSDRE, L.L.C. and Slim Texas, L.L.C. (CSDRE, L.L.C. and Slim Texas, L.L.C. are hereafter referred to as the “Developer”), sometimes collectively referred to as the “Parties,” acting by and through their respective authorized officers.

RECITALS

WHEREAS, the Developer is a Texas Limited Liability Company that intends to develop and operate a Slim Chickens Restaurant (the “Retailer”) on the Property, as described in “Exhibit A,” in Helotes, Texas; and

WHEREAS, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature the authority to provide for loans and grants of public money for the development and diversification of the State’s economy and the elimination of unemployment or underemployment; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (the “Chapter 380”), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the City; and

WHEREAS, pursuant to the Development Corporation Act, Article 5190.6 Tex. Rev. Civ. Stat. (the “Act”), the City has created the EDC to implement programs for promoting economic development within the City; and

WHEREAS, the EDC’s mission is to promote, encourage, and enhance the creation of jobs, the expansion of the local tax base, and our quality-of-life for Helotes residents through projects that assist in the retention and expansion of existing employers, and which attract new employers and aid in economic development and growth; and

WHEREAS, the EDC has determined, as described in “Exhibit B,” that making an economic development grant to the Developer in accordance with this Agreement constitutes a permissible “Program” within the terms of the Act and will promote new and expanded business development within the City, which is declared and expressly found to be in the public interest; and

WHEREAS, in addition to the six and a quarter percent (6.25%) sales and use tax imposed by the State, the City imposes a one percent (1.00%) sales and use tax (the “City Sales Tax”), as authorized by Section 321.101 of the Texas Tax Code, and a one-half percent (0.50%) sales and use tax for economic development (the “EDC Sales Tax”); and

WHEREAS, the City currently imposes a property tax rate of .350000 cents per one hundred dollars (\$100.00) property valuation (the “Property Tax”); and

WHEREAS, the EDC intends, and in connection with such intention, has authorized the Executive Director, as described in “Exhibit B,” to negotiate and execute this Agreement and to make payments to the Developer of forty percent (40%) of the annual EDC Sales Tax proceeds generated by the Retailer on the Property, up to and including the Maximum Grant Amount, the City Sales Tax and Property Tax proceeds withstanding, and received by the EDC for the purpose of encouraging business expansion and the creation of new jobs in the City; and

WHEREAS, the City Council of the City of Helotes, Texas intends, and in connection with such intention, has adopted an Ordinance, as described in “Exhibit C,” authorizing the abovementioned EDC project and to make payments to the Developer of forty percent (40%) of the annual City Sales Tax proceeds and forty percent (40%) of the annual Increased City Property Tax proceeds generated by the Retailer on the Property, up to and including the Maximum Grant Amount, the EDC Sales Tax proceeds withstanding, and received by the City for the purpose of encouraging business expansion and the creation of new jobs in the City.

NOW, THEREFORE, in consideration of the foregoing and on the terms and conditions hereinafter set forth and for other good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the City, EDC, and Developer agree as follows:

I.
AUTHORITY AND TERM

1.1 Authority.

The City’s and EDC’s execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City and EDC. The City and EDC acknowledge that the Developer is acting in reliance upon the City’s and EDC’s performance of its obligations under this Agreement in making the decision to develop the Property and complete the “Project,” hereinafter established.

1.2 Term.

This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties in the manner provided for herein.

1.3 Recitals incorporated.

The representations, covenants, and recitations set forth in the recitals to this Agreement are material to this Agreement, are hereby found and agreed to be true and correct, and are incorporated into and made a part hereof as though they were fully set forth in this Agreement.

II. **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning, as ascribed by common and ordinary usage.

“Adversarial Proceedings” include any cause of action regarding this Agreement filed by the Developer in any state or federal court or administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration or mediation.

“Assessed Taxable Value” shall mean the property tax value for the Property set annually by the Bexar County Appraisal District (the “BCAD”) for real property and improvements; however, the term does not include on-site business personal property.

“Base Tax Year” shall mean the property tax year beginning January 1, 2016.

“City Administrator” shall mean the individual so-designated by the City to act on its behalf in the administration of certain duties set forth herein.

“Code” shall mean the City of Helotes Code of Ordinances.

“Consummated” shall have the meaning assigned by the Texas Tax Code, Section 321.203.

“Detailed Confidentiality Report” (“DCR”) shall mean a report, outlined within “Exhibit D” and provided by the State to the City and EDC, in accordance with Texas Tax Code, Section 321.3022, which lists the amount of Sales and Use Tax paid (at 1.50%) (including any refunds, credits, or adjustments) by the Retailer and received by the City and EDC from the State for the sale or use of Taxable Items by the Retailer Consummated within the Property for specified periods which are to be used to justify the Developer’s GPR, together with such supporting documentation required herein and as the City and EDC may request.

“Effective Date” shall mean the last date of Agreement execution by all Parties.

“Expiration Date” shall mean the earlier of:

1. The City’s and EDC’s reimbursement of the Maximum Grant Amount to the Developer;
2. Thirteen (13) years from the Effective Date of this Agreement; or
3. Uncured default by the Developer.

“Fiscal Year” shall mean October 1st of any given calendar year through September 30th of any given following calendar year.

Gender: The gender of the wording throughout this Agreement shall always be interpreted to mean either sex, and, where the context requires, the plural of any word shall include the singular.

“Grant(s)” shall collectively mean payments made from Sales and Use Tax and Property Tax Receipts received by the City and/or EDC from the Developer and/or Retailer and made to the Developer, pursuant to a GPR.

“Grant Payment Request” (“GPR”) shall mean a request for payment due to the Developer from the City and EDC for the Project. A GPR shall, at a minimum, include the Request for Payment Form and the Texas Sales and Use Tax Return, Form 01-114 or similar, submitted at lawful intervals to the Texas Comptroller of Public Accounts.

“Grant Request Period” shall mean each calendar quarter following the Agreement’s Effective Date through the Agreement’s Expiration Date.

“Increased City Property Tax Proceeds” shall mean, for any given calendar year, the difference between the City’s actual Property Tax revenue for the Property, based on the Property’s current Accessed Taxable Value, minus the Property Tax revenue collected by the City for the Property during the Base Tax Year, as described in “Exhibit E”.

“Maximum Grant Amount” shall mean an amount not to exceed Six Hundred Thousand Dollars (\$600,000.00).

“Project” shall mean the Developer’s development and operation of a Slim Chickens Restaurant (the “Retailer”) on the Property in Helotes, Texas.

“Property” shall mean the real property described in “Exhibit A” upon which the Project, authorized by this Agreement, shall be developed and operated.

“Property Tax” shall mean the ad valorem tax imposed by the City on real property and improvements located within the corporate City limits.

“Property Tax Receipts” shall mean forty percent (40%) of the Increased City Property Tax Proceeds received by the City for the Property and its improvements during any tax year for which this Agreement is in effect, it being expressly understood that the property taxes are being used only as a measurement for City participation through the use of its general fund or other lawful source of payment.

“Request for Payment Form” shall mean the memorandum included within a GPR summarizing the Developer’s request for payment for the applicable Grant Request Period.

“Retailer” shall mean the Slim Chickens Restaurant required by the State of Texas to collect Sales and Use Tax on the sale of Taxable Items Consummated within the Property.

“Sales and Use Tax” shall mean the one and one-half percent (1.50%) combined sales and use tax imposed by the City and EDC on the sale or use of Taxable Items Consummated in the City by the Retailer, it being expressly understood that the Sales and Use Tax receipts are being used only as a measurement for City and EDC participation through the use of their general fund or other lawful source of payment. The term does not include the one-quarter percent (0.25%) street maintenance sales and use tax collected by the City.

“Sales Tax Receipts” shall mean forty percent (40%) of the City’s and EDC’s receipts from the Retailer’s collection of the one and one-half percent (1.50%) Sales and Use Tax as a result of the sale of Taxable Items Consummated within the Property by the Retailer for the applicable Grant Request Period.

“Taxable Items” shall mean both “taxable items” and “taxable services,” defined by Chapter 151, Texas Tax Code, as amended.

III. ECONOMIC DEVELOPMENT GRANTS

3.1 Grants.

The City and EDC agree to make Grants up to the Maximum Grant Amount to the Developer for the Project within the City of Helotes, Texas.

3.2 Grant Payments.

3.2.1 Sales Tax Payments.

The Retailer collects the Sales and Use Tax at the point of sale and remits the tax at lawful intervals to the Texas Comptroller of Public Accounts (the “Comptroller”) using the Texas Sales and Use Tax Return, Form 01-114 or similar. The Comptroller then remits the net tax amount after fees to the City. The City will then calculate the Grant payment to the Developer using the actual net amount received to determine the amount of the Grant payment. Grant payments will not be made to the Developer until funds are actually received by the City and EDC.

The City and EDC shall remit to Developer Sales Tax Receipts for the Grant Request Period requested by the Developer and associated with the Project. The Grants will be paid to the Developer within sixty (60) calendar days following the Developer’s submission of a complete GPR and shall continue until termination of this Agreement per Section 7.1. The Parties agree that the payment of Sales Tax Receipts to the Developer is subject to the City’s and EDC’s actual collection of Sales Tax Receipts. In the event the Sales Tax Receipts are insufficient during the term of this Agreement to pay the Grants, the City and EDC shall not be obligated to pay the Grants from any other source of funds or required to pay such deficit to the Developer.

3.2.2 Property Tax Payments.

The Developer remits Property Tax at lawful intervals to the Bexar County Tax Accessor – Collector (the “BCTAC”). The BCTAC then remits the net tax amount after fees, if any, to the City. The City will then calculate the Grant payment to the Developer using the actual net amount received to determine the amount of the Grant payment. Grant payments will not be made to the Developer until funds are actually received by the City.

The City shall remit to Developer Property Tax Receipts from the Property for the Grant Request Period requested by the Developer and associated with the Project. The Grants will be paid to the Developer within sixty (60) calendar days following February 1st of each calendar year, beginning with the first calendar year following the Effective Date and shall continue until termination of this Agreement per Section 7.1. The Parties agree that the payment of Property Tax Receipts to the Developer is subject to the City’s actual collection of Property Tax Receipts. The City will draft a separate form for the Developer to submit with a GPR evidencing payment of Property Tax for the Property to BCTAC. In the event the Property Tax Receipts are insufficient during the term of this Agreement to pay the Grants, the City shall not be obligated to pay the Grants from any other source of funds or required to pay such deficit to the Developer.

3.3 Grant Limitations.

The City and EDC shall not be obligated to pay any monies to the Developer beyond the Maximum Grant Amount, unless otherwise agreed to in writing by the Parties, and are only obligated to make Grants for Sales and Property Tax Receipts actually received by the City and/or EDC. Developer represents that it understands that any contributions by the Developer in anticipation of reimbursement from Grants shall never be obligations of the general funds of the City or EDC, but are only obligations of Grant funds, which are subject to the extent of the Project’s capacity to reimburse the Developer.

3.4 Grant Funds.

Grants to be provided herein shall be paid solely from Property Tax Receipts and Sales Tax Receipts available to the City and EDC. Under no circumstances shall any Grants include any receipts from the City’s and EDC’s imposition and collection of Sales and Use Tax for the sale of Taxable Items at any location, business, establishment, or entity Consummated within the City other than from the sale or use of Taxable Items by the Retailer Consummated within the Property, nor shall any Grants include any Property Tax Receipts received for real property or improvements not located within or on the Property.

3.4.1 No Bonds or Notes.

The City, EDC, and Developer represent that they understand and agree that neither the City nor the EDC shall issue any bonds or notes to cover any Project costs directly or indirectly related to the Developer’s improvements to or in the Property under this Agreement. The City and EDC understand that Developer may choose to issue notes utilizing Grant reimbursements for eligible costs directly or indirectly related to the Property under this Agreement. The City and EDC will not be parties to the Developer’s bonds or notes.

3.5 Confidentiality.

The City and EDC agree, to the extent allowed by State Law, to keep all information and documentation received from the Comptroller, pursuant to this Agreement hereof (the "Confidential Tax Information"), confidential. The City and EDC will use the Confidential Tax Information solely for the purposes of determining the Developer's entitlement to Grant funds. Further, the City and EDC agree to maintain the appropriate confidentiality of any information and documentation provided by Developer or Retailer to the City or EDC, unless disclosure of such information and documentation shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.

IV.

CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS

The obligation of the City and EDC to pay Grants to the Developer shall be conditioned upon the Developer's continued compliance with and satisfaction of each of the conditions set forth in this Agreement, as solely and finally determined by the City Council of the City of Helotes, Texas without recourse.

4.1 GPR.

Developer shall, as a condition precedent to the payment of any Grant, provide the City and EDC with a GPR in suitable form for the applicable Grant Request Period. The City Administrator shall provide the submittal form and instructions to be used by the Developer when submitting a GPR as a part of this Agreement. Each GPR must be submitted to the City within thirty (30) calendar days of the first of each month at the beginning of each calendar quarter, namely January, April, July, October. The first GPR must be submitted by the 30th of the month of the calendar quarter immediately following the opening of the Retailer and the collection of sales and use tax. Each GPR will be for the tax collected and submitted to the Comptroller and/or Bexar County for the previous quarter. Grant payments will be made upon receipt by the City and EDC of the DCR from the Comptroller for Sales Tax Receipts. Any GPR submitted beyond ninety (90) calendar days of the required submittal date will not be paid.

4.2 Detailed Confidentiality Report.

As a condition to the payment of any Sales Tax Receipts hereunder, the City and EDC shall receive a DCR for the applicable Grant Request Period for which payment of a Grant is requested. The City and EDC shall have no duty to calculate Sales Tax Receipts, determine the Developer's entitlement to any Grant, or pay any Grant during the term of this Agreement until such time as the City and EDC have been provided with a DCR for the applicable Grant Request Period. At the request of the City or EDC, the Developer shall provide such additional documentation as may be reasonably requested by the City or EDC to evidence, support, and establish the Sales and Use Tax collected by Retailer for the sale or use of Taxable Items by the same Consummated within the Property and received by the City and EDC from the Comptroller. The DCR shall, at a minimum, contain, include, or be accompanied by the following:

- (a) A schedule detailing the amount of Sales and Use Tax collected by Retailer and paid to the State as a result of the sale or use of Taxable Items Consummated within the Property for the previous City and EDC Fiscal Year Quarter; and
- (b) Information concerning any refund or credit of Sales and Use Tax received by the Retailer which had previously been reported by Retailer as Sales and Use Tax paid or collected.

4.3 Sales Tax Disclosure.

Developer covenants and agrees to include, as a condition, language which requires Retailer and their successors and assigns to sign or cause to be signed any documentation necessary to authorize the Comptroller to release and disclose to the City and EDC, for the term of this Agreement, any and all Sales and Use Tax information relating to the Retailer generating Sales and Use Tax within the Property.

4.4 Audit.

Developer shall, upon reasonable prior written notice to the City Secretary, during normal business hours, and at Developer's expense, have the right to audit and inspect the City's and EDC's records, books, and all other relevant records related to this Agreement.

The City and EDC shall, upon reasonable prior written notice to the Developer, during normal business hours, and at City's and EDC's expense, have the right to audit and inspect the Developer's records, books, and all other relevant records related to this Agreement.

The Parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.

4.5 Recapture.

In the event of Default by the Developer, the City and EDC shall, after providing Developer notice and an opportunity to cure the default, have the right to cease all future Grant payments, terminate this Agreement, and recapture all Grants provided to Developer within the prior twelve (12) month period.

4.6 Guidelines for Submission.

The City Administrator shall develop guidelines setting forth the specific details and procedural requirements for the timely submission of GPR(s) and the disbursement of Grants pursuant to this Agreement.

V.

COVENANTS AND DUTIES

5.1 Developer's Covenants and Duties.

Developer makes the following covenants and warranties to the City and EDC and agrees to timely and fully perform the obligations and duties contained in Article V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully

perform those obligations and duties within this Agreement shall be an act of Default by the Developer.

5.1.1 Developer is authorized to do business and is in good standing in the State of Texas, and it shall remain in good standing in the State of Texas and the United States of America during the full term of this Agreement.

5.1.2 The execution of this Agreement has been duly authorized by the Developer, and the individual signing this Agreement is the duly authorized individual and empowered to execute such Agreement and bind the Developer. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of the Developer's operating agreement, by-laws, or of any agreement or instrument to which the Developer is a party to or by which it may be bound. Developer will submit a signatory letter of authorization as a part of this Agreement.

5.1.3 The Developer is not a party to any bankruptcy proceedings currently pending or contemplated, and the Developer has not been informed of any potential involuntary bankruptcy proceedings.

5.1.4 To its current, actual knowledge, Developer has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.

5.1.5 Developer shall timely and fully comply with all of the terms and conditions of this Agreement.

5.1.6 Developer agrees to commence the Project within twelve (12) months.

5.1.7 Developer agrees to complete, or cause to be completed, the Project. Developer agrees to provide, or cause to be provided, all materials, labor, and services for completing the Project. Developer also agrees to obtain, or cause to be obtained, all necessary permits and approvals from the City and/or all other governmental agencies having jurisdiction over the construction of the Project on the Property.

5.1.8 Developer shall comply with all applicable City Code provisions for completing the Project.

5.1.9 Developer shall be responsible for paying, or causing to be paid, to City and all other governmental agencies the cost of all applicable permit fees and licenses required for construction of the Project.

5.1.10 Developer agrees to supervise the construction of the Project and cause the construction to be performed substantially in accordance with Federal, State, and local laws and ordinances and this Agreement.

5.1.11 Developer agrees to complete the Project in accordance with the Conceptual Land Use Plan, attached hereto as “Exhibit F”. If substantial completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire, other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond the Developer’s control, then, at the City’s and EDC’s reasonable discretion, the estimated date for completion of construction shall be extended by the period of such delay.

5.1.12 Developer shall cooperate with the City and EDC in providing all necessary information to assist the City and EDC in complying with this Agreement.

5.1.13 The Developer, in the execution of this Agreement, agrees that it and Retailer shall not discriminate in their employment practices against any person because of race, color, creed, sex or origin. The Developer and Retailer shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap, political belief, or affiliation.

5.1.14 Developer Bears Risk of Reimbursement. The Developer represents that it understands that any expenditures made by the Developer in anticipation of reimbursement from Grant funds shall not be, nor shall be construed to be, financial obligations of the City or the EDC. The Developer shall bear all risks associated with reimbursement, including, but not limited to: pre-development agreement costs, incorrect estimates of Grant funds, changes in tax rates or tax collections, changes in State Law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in building and development code requirements, changes in City policy, default by tenants, unanticipated effects covered under legal doctrine of force majeure, and / or other unanticipated factors.

5.1.15 Financing. The cost of the Project and all other improvement expenses associated with the Project shall be funded through the use of the Developer’s or Retailer’s own capital or through credit secured solely by the Developer or Retailer. The Developer may use any or part of the Property as collateral for construction loans or other loans, as required for the financing of the Project; however, no property with a lien still attached may be offered to the City or EDC for dedication. These Grant fund reimbursements made to the Developer are not intended to reimburse the Developer for all its costs incurred in connection with performing its obligations under this Agreement.

5.2 City and EDC’s Covenants and Duties.

The City and EDC are obligated to pay the Developer from sources contemplated by this Agreement over a period not to exceed thirteen (13) years from the Effective Date, subject to Developer’s timely and full satisfaction of all applicable duties and terms within this Agreement, as solely determined by the City Council of the City of Helotes, Texas. Further, City’s and EDC’s obligations to pay the Developer shall cease upon the earlier of:

1. The City’s and EDC’s reimbursement of the Maximum Grant Amount to the Developer;

2. Thirteen (13) years from the Effective Date of this Agreement; or
3. Uncured Default by the Developer.

5.3 Substantial Compliance and Default.

A Party shall be deemed in Default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or breaches or violates any of its representations contained in this Agreement. Failure by either Party to timely and substantially comply with any material performance requirement, duty, or covenant shall be considered an act of Default if uncured within sixty (60) days of receiving written notice from the other Party (a “Default”). Failure of the Developer to timely and substantially cure a Default will give the City and EDC the right to terminate this Agreement, as solely determined by the City Council of the City of Helotes, Texas. Failure of the City or EDC to timely and substantially cure a Default will give Developer the right to terminate this Agreement and/or pursue other legal remedies, including, without limitation, Dispute Resolution, pursuant to Article 7 of this Agreement.

VI.

DESIGN CRITERIA / DEVELOPMENT STANDARDS

6.1 Hill Country Theme.

Developer agrees that the Project shall be constructed in accordance with Code of Ordinances, Chapter 98 *Zoning*, Article IX *Architectural Review by Planning and Zoning Commission*.

6.2 Conceptual Land Use Plan

The Project shall be developed in accordance with the Conceptual Land Use Plan set forth in “Exhibit F”.

VII.

TERMINATION

7.1 Termination.

This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
 - (b) The Agreement’s Expiration Date;
 - (c) Payment of the Maximum Grant Amount;
 - (d) Developer files for bankruptcy or ceases operation of the Slim Chickens Restaurant;
- or
- (e) Termination under Section 5.3 above.

7.2 Extension Beyond Term and Reimbursement.

In recognition of the fact that Grants are, by necessity, calculated and paid after taxes have been levied and paid to the City and EDC and, therefore, will always be paid in arrears, the Expiration Date of this Agreement will be extended until any and all Grants relating to applicable Sales and Use Tax Receipts and Property Tax Receipts during the effective term of the Agreement have been paid in full by the City and EDC to the Developer. Notwithstanding the above, the standards set forth in Section VI of this Agreement and all other substantive requirements imposed upon Developer shall be perpetual and shall not terminate, unless otherwise specified in this Agreement.

VIII.
DISPUTE RESOLUTION

8.1 Mediation.

If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first, in good faith, seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, Dallas, Texas, before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation, mediation, and arbitration, collectively known as alternate dispute resolution (“ADR”), shall be assessed equally between the City, EDC, and Developer, with each party bearing their own costs for attorney’s fees, experts, and other costs of ADR and any ensuing litigation.

8.2 Under no circumstances will the Grant funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding regarding this Agreement against the City or EDC.

IX.
MISCELLANEOUS

9.1 Binding Agreement.

The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City, EDC, Developer, and their respective successors and assigns. The City Administrator shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City Council of the City of Helotes, Texas and EDC Board of Directors, on behalf of the City and EDC related thereto.

9.2 Mutual Assistance.

City, EDC, and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

9.3 Representations and Warranties.

City and EDC represent and warrant to the Developer that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Developer represents and warrants to the City and EDC that it has the requisite authority to enter into this Agreement.

9.4 Assignment.

Developer shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the EDC Executive Director and of the City Council of the City of Helotes, Texas, which shall not be unreasonably withheld; provided, however, that any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve the Developer of any liability to the City or EDC, including any required indemnity in the event that any Assignee hereof shall at any time be in default of the terms of this Agreement. The City and EDC may demand and receive adequate assurance of performance, including the deposit or provision of financial security by any proposed Assignee prior to its approval of an assignment.

9.5 Independent Contractors.

9.5.1 It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer at no time will be acting as an agent of the City or EDC and that all consultants or contractors engaged by Developer will be independent contractors of Developer. The Parties hereto understand and agree that City and EDC will not be liable for any claims that may be asserted by any third-party occurring in connection with services performed by the Developer under this Agreement, unless any such claims are due to the fault of the City or EDC.

9.5.2 By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City or EDC, with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

9.6 Notice.

Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the other Party at the addresses set forth below:

If intended for City or EDC:

City of Helotes or EDC
City Administrator
12951 Bandera Road (Physical)
P.O. Box 507 (Mailing)
Helotes, TX 78023

With a required copy to City Attorney:

Frank Garza
Davidson, Troilo, Ream & Garza, PC
601 NW Loop 410, Ste. 100
San Antonio, Texas 78216

If intended for Developer:

CSDRE, LLC
13355 Noel Road, Suite 1645
Dallas, TX 75240

Either Party may designate a different address at any time upon written notice to the other Party.

9.7 Governing Law.

This Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Bexar County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

9.8 Amendment.

This Agreement may be amended by mutual written agreement of the Parties, as approved by the EDC Executive Director and the City Council of the City of Helotes, Texas.

9.9 Legal Construction.

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

9.10 Interpretation.

Each of the Parties has 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 reasonably and neither more strongly for or against any Party.

9.11 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the EDC Executive Director and City Council of the City of Helotes, Texas.

9.12 No Personal Liability of Public Officials.

No public official or City employee shall be personally responsible for any liability arising under or growing out of this Agreement.

9.13 Paragraph Headings.

The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

9.14 Counterparts.

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

9.15 Exhibits.

Any Exhibits attached hereto are incorporated by reference for all purposes.

9.16 Survival of Covenants.

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

9.17 Employment of Undocumented Workers.

During the term of this Agreement, the Developer and Retailer agree to not knowingly employ any undocumented workers, and, if convicted of a violation under 8 U.S.C. Section 1324a(1), the Developer and Retailer shall be in Default and repay the amount of the Grant payments received by the Developer from the City and EDC within one hundred twenty (120) days after the date the Developer's conviction is final and all appeals have been exhausted. The Developer and Retailer are not liable for an unknown violation of this Section by a subsidiary, affiliate, or franchisee of the Developer or Retailer conducting the restaurant business or by a person with whom the Developer or Retailer contracts; provided, however, that identical federal law requirements provided for herein shall be included as a part of any agreement or contract which Developer or Retailer enters into with any subsidiary, assignee, affiliate, or franchisee for which Grants provided herein will be used.

9.18 INDEMNIFICATION

DEVELOPER AND RETAILER COVENANT AND AGREE TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND EDC (AND THEIR 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, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR EDC DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO DEVELOPER OR RETAILER'S NEGLIGENCE, WILLFUL MISCONDUCT, OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS

AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR RETAILER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR RETAILER, 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 AND/OR EDC 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 EDC AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER AND RETAILER SHALL PROMPTLY ADVISE CITY AND EDC, IN WRITING, OF ANY CLAIM OR DEMAND AGAINST CITY AND/OR EDC RELATED TO OR ARISING OUT OF DEVELOPER'S OR RETAILER'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S AND RETAILER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY AND/OR EDC SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OR RETAILER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

THE DEVELOPER AND RETAILER SHALL ALSO INDEMNIFY THE CITY AND/OR EDC AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF THE DEVELOPER'S OR RETAILER'S ACTIONS AND THE DEVELOPER'S OR RETAILER'S GENERAL CONTRACTOR'S ACTIONS RELATED TO THE CONSTRUCTION OF THE PROJECT.

9.19 Insurances

9.19.1 The Developer and Retailer shall maintain, at their own cost and expense, such usual, customary, and appropriate insurance. Insurance shall be carried with a financially responsible insurance company, licensed in the State of Texas, with an A.M. Best Rating of Excellent or better. The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by the Developer and Retailer throughout the Agreement term. Certificates of coverage for the following insurances shall be mailed or faxed to the City of Helotes within thirty (30) days of the Agreement Execution Date.

9.19.1.1 Comprehensive General Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence, and \$2,000,000.00 aggregate.

9.19.1.2 Comprehensive Automobile Liability Insurance. With limits of liability for bodily injury of not less than \$1,000,000.00 any one person, and \$2,000,000.00 any one occurrence, and for property damage of not less than

\$1,000,000.00 any one occurrence. Such coverage shall include owned, hired, and non-owned vehicles.

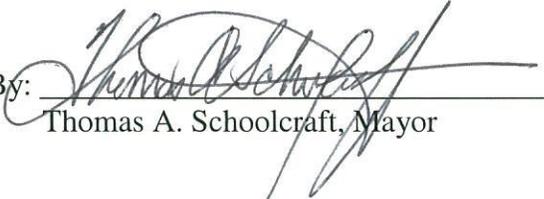
9.19.2 The failure of the Developer or Retailer at any time to maintain the required insurances required by Section 9.19 shall be considered an event of Default.

9.20 Additional Instruments.

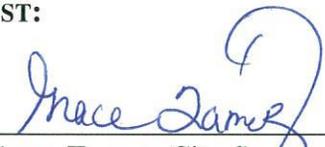
City, EDC, and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

Executed on this 27th day of January, 2017

CITY OF HELOTES, TEXAS

By: 
Thomas A. Schoolcraft, Mayor

ATTEST:

By: 
Grace Tamez, City Secretary

APPROVED AS TO FORM:

By: _____
Frank Garza, City Attorney

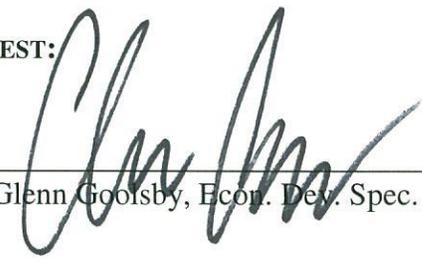
Executed on this 27th day of January, 2017

**CITY OF HELOTES ECONOMIC
DEVELOPMENT CORPORATION**



By: _____
Rick Schroder, Executive Director

ATTEST:

By:  _____
Glenn Goolsby, Econ. Dev. Spec.



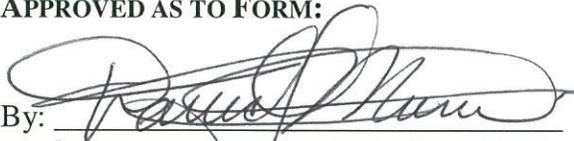
Executed on this 8th day of February, 2017

CSDRE, LLC



By: _____
Name: Chris Dharod
Title: President

APPROVED AS TO FORM:

By: 
DAVID F. MORRIS, GENERAL COUNSEL