

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE LA PORTE DEVELOPMENT CORPORATION, AND GANTSTEIN ESQUIRE, LLC, A TEXAS DOMESTIC LIMITED LIABILITY COMPANY, FOR USE OF TYPE B DEVELOPMENT CORPORATION SALES TAX FUNDS**

THIS AGREEMENT made by and entered into this 1<sup>st</sup> day of June, 2015 between the La Porte Development Corporation, a Type B non-profit corporation operating under authority of Texas Local Government Code Chapters 501 and 505, hereinafter "LPDC", and Gantstein Esquire, LLC, a Texas Domestic Limited Liability Company, hereinafter referred to as "Recipient".

**WITNESSETH:**

WHEREAS, the voters of the City of La Porte authorized the levying of additional sales tax within the City for promotion of economic development and the LPDC is authorized to use such tax revenues for certain qualifying projects and other economic development related purposes; and

WHEREAS, Recipient is a Texas based commercial development company that specializes in rehabilitating underutilized commercial buildings; and

WHEREAS, Recipient wishes to renovate the exterior and interior of a presently vacant 9000 square foot restaurant building formerly known as the "Texans Sports Bar and Grill", located at 10003 Spencer Hwy., and make associated site improvements, for the purpose of operating a "Pipeline Grill" restaurant, and which would 1) result in the expenditure by Recipient of an estimated \$1,200,000.00 in capital improvements; 2) result in the generation of approximately \$4,000,000.00 in annual gross retail sales; and 3) employ an estimated forty (40) full time and sixty (60) part-time personnel; and

WHEREAS, Recipient has requested that LPDC provide financial incentives to Recipient to contribute towards the cost of renovation of the property at 10003 Spencer Hwy., under a qualifying project of the LPDC for infrastructure, site and related improvements, as authorized by Texas Local Government Code Chapters 501 and 505, and it is the desire of LPDC to assist in the funding of same, finding that such expenditures will promote or develop new or expanded business enterprises.

WHEREAS, Texas law and the by-laws of the LPDC require that certain expenditures and projects by the LPDC be approved by the governing body of the City; and whereas the LPDC Board has duly approved such project and the expenditures for same have been authorized by the La Porte City Council; and

NOW THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to each of the parties hereof, as well as to the citizens of the City of La Porte, Texas, the parties have agreed and do hereby agree as follows:

**ARTICLE I**

In consideration of Recipient renovating the existing structure at 10003 Spencer Hwy. and operating a "Pipeline Grill" restaurant at the subject site ("Restaurant" herein), which proposal was considered in that certain public hearing authorizing a proposed project for the expenditure of LPDC funds for the promotion or development of new or expanded business enterprises, held before the LPDC on April 13, 2015, LPDC agrees to provide Recipient an incentive package consisting of a cash payment in a total sum not to exceed \$300,000.00, to be distributed in three increments of up to \$100,000.00 each, with each distribution conditioned on the attainment of certain performance thresholds, more specifically outlined as follows:

- 1) A cash incentive payment in an amount equal to \$100,000.00 will be distributed to Recipient by LPDC, upon receipt by LPDC of a) proof of Certificate of Occupancy issued by the City of La Porte, Texas to Recipient for completion of the renovated Restaurant and b) proof of a minimum capital investment in the amount of \$1,200,000.00 applied towards renovation of the Restaurant and related infrastructure and site work, exclusive of the cost to Recipient to purchase the existing real estate tract and vacant building. However, in no case will the \$100,000.00 payment be made by LPDC if a copy of a Certificate of Occupancy issued for the Restaurant and documentation substantiating the expenditure of no less than \$1,200,000.00 applied towards capital improvements to the Restaurant, is not delivered to and received by LPDC by June 30, 2016. In the case that proof of Certificate of Occupancy and minimum capital investment of \$1,200,000.00 for the Restaurant is presented to LPDC on or before said June 30, 2016 deadline, the LPDC shall convene a meeting of the LPDC Board of Directors for a date no later than forty-five (45) days after receipt of proof of the Certificate of Occupancy and minimum capital investment of \$1,200,000.00 by LPDC from Recipient. Upon verification of the completion of the Restaurant, as reflected by formal vote of the LPDC Board of Directors that Recipient has satisfied the requirements of this paragraph, LPDC will then remit the \$100,000.00 to Recipient within a period not to exceed thirty (30) days.

In the case where Recipient fails to submit proof of a Certificate of Occupancy and proof of a minimum capital investment in the amount of \$1,200,000.00 by the June 30, 2016 deadline, despite being disqualified for the incentive payment Recipient will remain eligible to qualify for receipt of the incentive payments under paragraphs 2 and 3 below, in so far as the conditions precedent established in such paragraphs are met. However, Recipient will be required to submit proof of Certificate of Occupancy in order to qualify for the incentive payments outlined in paragraphs 2 and 3 below.

- 2) A cash incentive payment in an amount equal to \$100,000.00 will be distributed to Recipient by LPDC, upon delivery to the LPDC of a) an employment roster evidencing that Recipient employs a minimum of thirty-five (35) full time and fifty (50) part-time individuals as employees at the Restaurant site as of December 31, 2017 and b) documentation evidencing that Recipient's total taxable retail sales for the period January 1, 2017 -December 31, 2017 is equal to or greater than \$4,000,000.00. However, in no case will the \$100,000.00 payment be made by LPDC if proof of the employment of a minimum of thirty-five (35) full time and fifty (50) part-time personnel as of December 31, 2017 and Recipient's total taxable retail sales for the period January 1, 2017 – December 31, 2017 in an amount equal to or greater than \$4,000,000.00 is not delivered to and received by LPDC by December 31, 2017. Proof of employment, for purposes of this agreement, may be required by submission to LPDC by the said December 31, 2017 deadline, of a) copies of Recipient's 941 Report to the Internal Revenue Service and C3 Report to the Texas Workforce Commission for each employee (but with social security numbers of each employee redacted) and b) a notarized statement executed by Recipient's Board of Directors affirming that thirty-five (35) full time and fifty (50) part-time personnel employees are employed by Recipient for positions permanently located at the Restaurant site.

Notwithstanding the foregoing requirements, Recipient will be entitled to receive a pro-rata portion of the \$100,000.00 incentive payment in the event that it should fail to provide documentation evidencing that Recipient's total taxable retail sales for the period January 1, 2017 – December 31, 2017 is equal to or greater than \$4,000,000.00 by the December 31, 2017 deadline. However, Recipient shall be entitled to payment of a pro rata share of the \$100,000.00 incentive grant only in the instance that Recipient's total taxable retail sales for the period January 1, 2017 – December 31, 2017 is equal to or greater than \$3,750,000.00. Where Recipient fails to generate total taxable retail sales for the period January 1, 2017 – December 31, 2017 in an amount equal to or greater than \$3,750,000.00, it shall be disqualified from receiving any portion of the \$100,000.00 incentive payment.

In the case that proof of total taxable retail sales for the period January 1, 2017 – December 31, 2017 in an amount equal to or greater than \$3,750,000.00 is presented to LPDC on or before said December 31, 2017 deadline, the LPDC shall convene a meeting of the LPDC Board of Directors for a date no later than forty-five (45) days after receipt of proof of the total taxable retail sales from Recipient. Upon verification of Recipient's total taxable retail sales of at least \$4,000,000.00, or minimum of \$3,750,000.00 for qualification of pro rata payment, as reflected

by formal vote of the LPDC Board of Directors that Recipient has satisfied the requirements of this paragraph, LPDC will then remit the \$100,000.00, or pro rata share as applicable, to Recipient within a period not to exceed thirty (30) days. For purposes of clarification only, the following two examples shall serve to illustrate the application of this paragraph:

*Example 1: If Recipient provides evidence of total taxable sales for the Restaurant site of \$3,700,000.00 by the December 31, 2017 deadline, the incentive payment under this section would be \$0.*

*Example 2: If Recipient provides evidence of total taxable sales for the Restaurant site of \$3,800,000.00 by the December 31, 2017 deadline, the incentive payment under this section would be calculated at \$3.8M/\$4.0M, or 95% of the \$100,000.00 incentive payment, for a total payment of \$95,000.00.*

- 3) A cash incentive payment in an amount equal to \$100,000.00 will be distributed to Recipient by LPDC, upon delivery to the LPDC of a) an employment roster evidencing that Recipient employs a minimum of thirty-five (35) full time and fifty (50) part-time individuals as employees at the Restaurant site as of December 31, 2018 and b) documentation evidencing that Recipient's total taxable retail sales for the period January 1, 2018 – December 31, 2018 is equal to or greater than \$4,000,000.00. However, in no case will the \$100,000.00 payment be made by LPDC if proof of the employment of a minimum of thirty-five (35) full time and fifty (50) part-time personnel as of December 31, 2018 and Recipient's total taxable retail sales for the period January 1, 2018 – December 31, 2018 in an amount equal to or greater than \$4,000,000.00 is not delivered to and received by LPDC by December 31, 2018. Proof of employment, for purposes of this agreement, may be required by submission to LPDC by the said December 31, 2018 deadline, of a) copies of Recipient's 941 Report to the Internal Revenue Service and C3 Report to the Texas Workforce Commission for each employee (but with social security numbers of each employee redacted) and b) a notarized statement executed by Recipient's Board of Directors affirming that thirty-five (35) full time and fifty (50) part-time personnel employees are employed by Recipient for positions permanently located at the Restaurant site.

Notwithstanding the foregoing requirements, Recipient will be entitled to receive a pro-rata portion of the \$100,000.00 incentive payment in the event that it should fail to provide documentation evidencing that Recipient's total taxable retail sales for the period January 1, 2018 – December 31, 2018 is equal to or greater than \$4,000,000.00 by the December 31, 2018 deadline. However, Recipient shall be entitled to payment of a pro rata

share of the \$100,000.00 incentive grant only in the instance that Recipient's total taxable retail sales for the period January 1, 2018 – December 31, 2018 is equal to or greater than \$3,750,000.00. Where Recipient fails to generate total taxable retail sales for the period January 1, 2018 – December 31, 2018 in an amount equal to or greater than \$3,750,000.00, it shall be disqualified from receiving any portion of the \$100,000.00 incentive payment.

In the case that proof of total taxable retail sales for the period January 1, 2018 – December 31, 2018 in an amount equal to or greater than \$3,750,000.00 is presented to LPDC on or before said December 31, 2018, deadline, the LPDC shall convene a meeting of the LPDC Board of Directors for a date no later than forty-five (45) days after receipt of proof of the total taxable retail sales from Recipient. Upon verification of Recipient's total taxable retail sales of at least \$4,000,000.00, or minimum of \$3,750,000.00 for qualification of pro rata payment, as reflected by formal vote of the LPDC Board of Directors that Recipient has satisfied the requirements of this paragraph, LPDC will then remit the \$100,000.00, or pro rata share as applicable, to Recipient within a period not to exceed thirty (30) days. For purposes of clarification only, the following two examples shall serve to illustrate the application of this paragraph:

*Example 1: If Recipient provides evidence of total taxable sales for the Restaurant site of \$3,700,000.00 by the December 31, 2018 deadline, the incentive payment under this section would be \$0.*

*Example 2: If Recipient provides evidence of total taxable sales for the Restaurant site of \$3,800,000.00 by the December 31, 2018 deadline, the incentive payment under this section would be calculated at \$3.8M/\$4.0M, or 95% of the \$100,000.00 incentive payment, for a total payment of \$95,000.00.*

## **ARTICLE II**

All funds received as herein provided shall be solely for the purpose of contributing towards Recipient's costs in the renovation of the exterior and interior of the presently vacant 9000 square foot restaurant building formerly known as the "Texans Sports Bar and Grill", located at 10003 Spencer Hwy., and for the making of associated site and infrastructure improvements, to operate a "Pipeline Grill" restaurant. Recipient further acknowledges that the incentive grant provided for herein is tied to a project of the LPDC for the promotion or development of new or expanded business enterprises, as authorized by Texas Local Government Code chapters 501 and 505.

## **ARTICLE III**

Disbursement and/or retention of the cash incentive identified in Article I of this Agreement shall be made as follows:

- A. Disbursement shall be made to Recipient, subject to the satisfaction of the conditions precedent or conditions subsequent contained within Article I of this Agreement.
- B. LPDC's obligation to Recipient shall not exceed \$300,000.00, nor shall LPDC be obligated to reimburse Recipient for requests delivered to LPDC after the termination of this Agreement.

#### **ARTICLE IV**

Recipient understands that the funds paid to Recipient by the LPDC are derived from tax revenues collected under Texas Local Government Code 505.252, and that LPDC has estimated the tax revenues to be collected during the term of this Agreement. Recipient further understands, acknowledges, and agrees that if the tax revenue actually collected is less than 90% of the estimated tax revenues to be collected in any fiscal year during the term of this Agreement, LPDC will be under no obligation to provide funding to Recipient for any payment or payments during or after the fiscal year for which there is a revenue shortfall. Upon execution of the Agreement, funds will be placed in a City of La Porte designated commitment account for purposes of this Agreement.

#### **ARTICLE V**

In the event of any default by Recipient hereunder, including, but not limited to, use of the funds provided herein for purposes other than those stated in Article I of this Agreement, LPDC may cease all future payments hereunder and terminate this Agreement. In addition, LPDC shall have the right to reclaim and recapture, and Recipient shall refund, any funds that are not spent in accordance with the terms of this Agreement, including 1) LPDC funds spent by Recipient in contravention of this Agreement and 2) any LPDC funds previously paid to Recipient but not yet spent by Recipient. In each such case, the previously paid cash payment or payments shall be remitted to the LPDC within sixty (60) of receipt of written demand for same.

Any breach of this covenant shall be grounds for immediate termination of the distribution of funds.

#### **ARTICLE VI**

The term of this Agreement is for a period beginning on the date of approval by LPDC and ending March 31, 2019.

#### **ARTICLE VII**

All funds provided by the LPDC pursuant to this Agreement may be used only for the purposes authorized by this Agreement. Notwithstanding Article I,

above, City shall be under no obligation to make any fund disbursements if the reports required under this Article have not been delivered to the LPDC.

#### **ARTICLE VIII**

This Agreement does not create any joint venture, partnership, or agency relationship between the LPDC and Recipient. Recipient shall have exclusive control of, and the exclusive right to control the details of the work to be performed by Recipient hereunder and all personnel performing same, and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of Recipient's duties or responsibilities hereunder be considered an officer, agent, servant, or employee of the LPDC.

#### **ARTICLE IX**

Recipient agrees to assume and does hereby assume all responsibility and liability for damages sustained by persons or property, whether real or asserted, by or from the carrying on of work by Recipient or in the performance of services performed and to be performed by Recipient hereunder. Recipient covenants and agrees to, and does hereby indemnify, defend, and hold harmless LPDC and all their respective officers, agents, and employees from all suits, actions, claims, and expenses of any character, including attorney's fees, brought for or incurred on account of any injuries or damages, whether real or asserted, sustained by any person or property by or in consequence of any intentional or negligent act, omission, or conduct of Recipient, its agents, servants or employees.

#### **ARTICLE X**

This Agreement may be amended by the mutual agreement of the Parties hereto in writing to be attached to and incorporated into this Agreement.

#### **ARTICLE XI**

Recipient shall adhere to all local, state, and federal laws and regulations that may affect its actions made pursuant to this Agreement, and shall maintain in effect during the term of this Agreement any and all federal, state, and local licenses and permits which may be required of Recipients generally.

#### **ARTICLE XII**

Recipient may not assign this Agreement, or any of the benefits provided herein including but not limited to incentive payments identified in Article I, without the written consent of LPDC.

#### **ARTICLE XIII**

The waiver by LPDC of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

#### **ARTICLE XIV**

The obligations of the Parties to this Agreement are performable in Harris County, Texas and if legal action is necessary to enforce same, venue shall lie in Harris County, Texas.

#### **ARTICLE XV**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

#### **ARTICLE XVI**

This Agreement may be executed in triplicate, each of which shall be deemed an original and constitute one and the same instrument.

#### **ARTICLE XVII**

Neither LPDC nor Participant shall be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean Acts of God, civil riots, floods, and any other cause not reasonably within the control of LPDC or Recipient except as herein provided, and which by the exercise of due diligence LPDC or Recipient is unable, wholly or in part, to prevent or overcome.

#### **ARTICLE XVIII**

In submitting this application, the applicant whose signature appears below affirms its intent and commitment to comply in full with Section 2264.052 of the Government Code and certifies that it does not and will not knowingly employ an undocumented worker during any time period associated with the public subsidy for which the application is being submitted. The applicant further certifies its understanding and agreement that if it is convicted of a violation of 8 U.S.C. Section 1324a(f), providing for civil and/or criminal penalties for engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens, it shall repay the amount of the public subsidy with interest, at the rate and according to the terms of the agreement signed under Section 2264.053 of the Government Code, not later than the 120th day after the date the city notifies the business of the violation.

#### **ARTICLE XIX**

The Agreement embodies the complete agreement of the parties hereto, superceding all oral or written pervious and contemporary agreements between the Parties, which relate to matters in this Agreement.

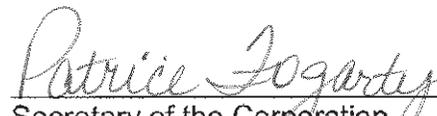
SIGNED AND AGREED to by LPDC and Recipient on the dates indicated below.

LA PORTE DEVELOPMENT CORPORTION

  
\_\_\_\_\_  
Richard Warren, President

June 1, 2015  
Date

ATTEST

  
\_\_\_\_\_  
Secretary of the Corporation