

**CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF SEGUIN AND
DOUBLE J PROPERTY VENTURES, LLC**

This Chapter 380 Economic Development Agreement (this “Agreement”) is entered into between Double J Property Ventures, LLC (“Double J”), owners of 114 S. Austin Street (first floor), and 106 W. Donegan Street (second floor), Seguin, Texas, its successors and assigns , and **The City of** a home rule city (the “City”). Double J and the City may be referred to jointly herein as “the Parties” and individually as a “Party.”

RECITALS

WHEREAS, the City Council of the City has adopted Resolution No. _____ attached as **Exhibit “A”** (“Resolution”), authorizing the City to make certain economic development grants to Double J in recognition of the positive economic benefits which will accrue to the City through Double J’s efforts in rehabilitating the two floors of the Austin/Donegan Street building in the Downtown Historic District including the installation of an elevator to make the second floor ADA accessible (the “Project”); and

WHEREAS, the City desires to offer incentives to Double J over a period of time which will enable Double J to undertake planned project (“Project”); and

WHEREAS, the City believes that the Project will contribute to the economic development of the City by generating employment and other economic and social benefits to the City.

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Double J agree as follows:

1. Authority

The City’s execution of this Agreement is authorized by Chapter 380, *Texas Local Government Code*, and by the Resolution and constitutes a valid and binding obligation of the City, subject to the conditions precedent as stated hererein. Double J’s execution and performance of this Agreement constitutes a valid and binding obligation of Double J. The City acknowledges that Double J is acting in reliance upon the City’s performance of its obligations under this Agreement in making its decision to commit substantial resources and money to acquire and develop the Property and Double J acknowledges that City is acting in reliance upon Double J’s full and complete performance of its obligations under this Agreement in making its decision to commit substantial resources to this Project.

2. Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

2.1 “Act of Default or Default” means failure to timely, fully, and completely comply with one or more requirements, obligations, duties, terms, conditions or warranties, as stated in this Agreement. City may accept substantial compliance in lieu of full compliance by waiving such act of default.

2.2 “City of Seguin or City” means the governing municipal corporation, and the area that is within the city limits of the City of Seguin.

2.3 “Code” means the Seguin Code of Ordinances in effect as of the Effective Date.

2.4 “Effective Date” means June 16, 2021.

2.5 “Force Majeure” means any event in which any Party shall be delayed, hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, unavailability of any utility service, restrictive governmental laws or regulations, riots, insurrections, the act, the failure to act, or default of another Party or a material worsening of current conditions caused by acts of terrorism or war (whether or not declared), or severe weather occurring after the execution of this Agreement, which materially impair the Party’s ability to perform any act required under this Agreement.

2.6 “Project” means the remodelling and improvement of the building whose first floor is located at 114 South Austin Street, with a second floor with an address of 106 West Donegan Street. The improvement shall include a staircase and an elevator to the second floor of the building so that the building is accessible for persons with disabilities as set for in the Americans with Disabilities Act and the Texas Accessibility Standards. All facilities shall be installed by licensed contractors in full compliance with the Seguin building code as found in the current Seguin Code of Ordinances.

2.7 “Insolvent” means failure to timely pay debts in the ordinary course of business or can not pay all debts when and as they become due, or is insolvent within the meaning of the federal bankruptcy law.

2.8 “Double J” means Double J Property Ventures, LLC as operated by Dustin and Natalie Jones.

2.9 “Program” means the economic development program established by the City under the Resolution, as authorized by Chapter 380, *Texas Local Government Code*, to promote local economic development and stimulate business and commercial activity within the City.

3. Term

3.1 This Agreement will become enforceable upon the Effective Date and will terminate the tenth year from the Effective Date or when the maximum reimbursement rate is reached, whichever first occurs.

4. City's Performance Criteria

4.1 The City is obligated to credit Double J an amount not to exceed the Maximum Reimbursement Amount from sources contemplated by this Agreement over a period not to exceed the Term of Ten Years, subject to the conditions precedent that Double J has timely and fully complied with all applicable terms and conditions contained in this Agreement.

4.2 Failure by City to timely and substantially comply with any performance requirement shall be an Act of Default by City giving Double J the right to the contracted amount not already provided to Double J by City in previous payments.

5. Double J's Covenants, Warranties, Obligations and Duties

5.1 **Double J** makes the following covenants and warranties to City, and agrees to timely and fully perform the following obligations and duties. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this Agreement shall be an Act of Default by Double J. Failure to comply with any one covenant or warranty shall constitute an Act of Default by Double J.

5.2 In addition to completion of the Project, Double J agrees to extend, for a period of ten more years, the easement for the mural that is painted on the east side of the building. The City shall maintain the integrity of the mural and nothing in the extension of this easement obligates Double J to maintain the mural. Double J shall receive a \$2,500.00 (Two Thousand Five Hundred Dollar) credit to the City's incentive for the mural easement.

5.3 Double J is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

5.4 The execution of this Agreement has been duly authorized by Double J's authorized agent or managing partner, and the individual signing this Agreement is the principle or managing partner, empowered to execute such Agreement and bind the corporation, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Double J's by-laws, or of any agreement or instrument to which Double J is a party or by which it may be bound, such authority to be evidenced by a corporate resolution, attached hereto at the time of execution.

5.5 No litigation or governmental proceeding is pending or, to the knowledge of Double J or Double J's officers, threatened against or affecting Double J that may result in any material adverse change in Double J's business, properties or operation. No consent, approval or

authorization of or registration or declaration within any governmental authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.

5.6 There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Double J has not been informed of any potential involuntary bankruptcy proceedings.

5.7 To its current, actual knowledge, Double J has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business in Seguin, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

5.8 The funds herein granted shall be utilized solely for the purpose of purchasing an elevator and related equipment which comprises part of the cost of Project as described herein. Double J shall purchase the Project Equipment and provide the City with proof of that purchase. Project equipment cannot be assigned during the term of this Agreement.

5.9 Double J shall timely and fully comply with all of the terms and conditions of this Agreement.

6. Incentive

6.1 The City of Seguin will offer Double J a Thirty-Thousand Dollar (\$30,000.00) ten year zero interest loan for the Project with a \$2,500 credit for the mural easement leaving \$27,500.00 as the "Maximum Reimbursement Amount".

6.2 The loan shall be paid through credits equal to the City's 1.0% sales tax generated from retail sales at businesses located on the premises, to be credited monthly from the sales tax from reports submitted by Double J to the Seguin Director of Finance and verified by the City's sales tax tracking software, ZacTax.

6.3 The loan shall also be paid through credits equal to the City's share of ad valorem taxes collected on the increased value, from the 2020 calendar year as a base, of the property to be credited March 31 of each year during the term of this Agreement.

6.4 If the combined sales and ad valorem tax payments over a ten year period are not greater than or equal to the loan amount, then Double J shall owe the City the difference in the balance at the end of the Term.

7. Suspension of Payments

7.1 City, under the following circumstances, and at its sole discretion, may suspend its obligations under this Agreement and all future payment obligations shall automatically cease upon any one of the following events, which are an Act of Default:

7.2 Failure to timely pay advelorum taxes by January 31 of each year of this Agreement.

7.3 The appointment of a receiver of Double J, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

7.4 The adjudication of Double J as bankrupt.

7.5 The filing by Double J of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

8. Double J's Liability

8.1 Should Double J fail to timely or substantially comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement such failure shall be an Act of Default by Double J and, if not cured and corrected within ninety (90) days after written notice to do so, City as its sole remedies, may cease making any further economic payments pursuant to this Agreement and/or shall have the right to repossess the smoking equipment that is the subject of this Agreement.

8.2 In the event of unforeseeable third party delays or Force Majeure and upon a reasonable showing by Double J that it has immediately and in good faith commenced and is diligently and continuously pursuing the correction, removal or abatement of such delays by using its diligent, good faith efforts, City may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld.

8.3 Any delay for any amount of time by City in providing notice of Default to Double J shall in no event be deemed or constitute a waiver of such Default by City of any of its rights and remedies available in law or in equity.

8.4 Any waiver granted by City to Double J of an Act of Default shall not be deemed or constitute a waiver of any other

9. City's Liability Limitations

Should City fail to timely or substantially comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failures shall be an Act of Default by City and City shall have ninety (90) days to cure and remove the Default upon receipt of written notice to do so from Double J. Double J specifically agrees that City shall only be liable to Double J for the amount of the money grants it is required to convey to Double J and shall not be liable to Double J for any alleged or actual consequential damages.

10. Miscellaneous Provisions

10.1 Changes in Law. If, during the Term of this Agreement, State law applicable to *ad valorem* taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to Double J under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever discretionary taxes and revenues are legally available to the City to be allocated to the Chapter 380 Payments. The foregoing does not require the City to use funds from sources which are not within the City's discretion to allocate to the Project in order to achieve the same economic benefits to both Parties, which would have resulted if the law had not changed.

10.2 Complete Agreement/Amendment. This Agreement represents a complete agreement of the parties and supersedes all prior written and oral matters related to this Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only in writing executed by both the City and Double J.

10.3 Assignment. This Agreement is personal to the Parties and may not be transferred or assigned to any other person or entity.

10.4 Mutual Assistance/Good Faith. The City and the Double J each agree to act in Good Faith and to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist the other in carrying out such terms and provisions in order to put the other in the same economic condition contemplated by this Agreement, regardless of any changes in public policy, the law or taxes or assessments attributable to the Property.

10.5 Representations and Warranties. The Parties represent and warrant to one another that the Program and this Agreement are 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.

10.6 Attorney's Fees. If any legal action or proceeding is commenced between the City and Double J to enforce the provisions of this Agreement or to recover damages for its breach, the prevailing Party in the legal action will be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

10.7 Termination. If Double J elects not to proceed with the acquisition of the Property or the development of the Project as contemplated by this Agreement, Double J will notify the City in writing, and this Agreement and the obligations of all Parties will be deemed terminated and of no further force or effect as of the date of such notice.

10.8 Notice. Any notice or other communication ("Notice") given under this Agreement must be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the Party, or an agent of the Party; or (iii) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners

specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective two (2) days after deposit. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

Double J :

Double J Property Ventures, LLC
796 Gin Spur Road
Seguin, Texas 78155

City:

City Manager
205 N. River Street
Seguin, Texas 782155

With a copy to: City Attorney

All Parties may designate a different address at any time by giving written Notice to the other Parties.

10.9 Interpretation. Each of the Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against any Party based on draftsmanship.

10.10 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. The City, its past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project.

10.11 Applicable Law. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and venue will lie in Hays County, Texas.

10.12 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected and it is also the intention of the Parties 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 or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

10.13 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 paragraphs.

10.14 No Third Party Beneficiaries. This Agreement is not intended to nor shall it be interpreted to confer any rights, privileges or causes of action upon any third party.

10.15 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

EXECUTED to be effective as of the ____ day of July, 2021.

DOUBLE J:

By: Dustin Jones

Date: _____

CITY:

By: Steve Parker, City Manager