

## **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

Pursuant to Section 1.4.4.1 of the City of San Marcos Land Development Code, this agreement (the "Agreement") is entered into by and between Willy Jack, L.L.C. (the "Owner") and the City of San Marcos, Texas (the "City"). The Owner and the City are collectively referred to as the "Parties."

### **PART 1. RECITALS**

**Section 1.01.** The City seeks to promote local economic development and to stimulate business and commercial activity in the City by, among other things, encouraging new in-fill development and job creation in the downtown area.

**Section 1.02.** The Owner is the owner of the real property and improvements at 242 North LBJ Drive (the "Property"). The Property is located within the Central Business Area ("CBA") as defined in the City's Land Development Code ("LDC").

**Section 1.03.** The Owner has proposed and intends to redevelop the Property by remodeling the existing building and operating a restaurant with an outdoor seating area that will also serve wine, beer, and mixed beverages for on-premises consumption (the foregoing activities are collectively, the "Project").

**Section 1.04.** The LDC establishes special conditions for the issuance of a Conditional Use Permit ("CUP") for a restaurant serving alcoholic beverages for consumption on its premises. Pursuant to the requirements of Section 4.3.4.2(b)(8) the LDC the Owner is subject a six-month waiting period before beer and wine may be sold from the Property for on-premises consumption and a 12 month waiting period before mixed beverages may be sold from the Property for on-premises consumption.

**Section 1.05.** Section 1.4.4.1 of the LDC authorizes the City Council to grant waivers of certain requirements under the LDC for economic development purposes. The waiting periods for the sale of alcoholic beverages for on-premises consumption under Section 4.3.4.2 (b)(8) of the LDC are major impediments to the Owner's successful execution of the Project and redevelopment of the Property and the Owner, therefore, seeks a waiver of these waiting periods.

**Section 1.06.** The City Council finds that the Owner's request for a waiver complies with the requirements for granting a waiver of certain requirements of the LDC for economic development purposes under Section 1.4.4.1 of the LDC. The City Council, therefore, is amenable to waiving the applicability of the waiting periods to the Project.

**Section 1.07.** In consideration of the mutual benefits stated in the Agreement and the promises of the Parties set forth below, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

## **PART 2. OBLIGATIONS OF OWNER**

**Section 2.01. Execution of the Project.** On or before January 1, 2016 the Owner will commence execution of the Project to include building renovation and remodeling, landscaping, signage and related improvements in conformance with plans and specifications approved by the City's Department of Planning and Development Services. The Owner will pursue completion of the Project with commercially reasonable diligence, subject to *Force Majeure* events as defined in Section 5.05 below. The Owner, in executing the Project, shall comply with all requirements of all applicable City of San Marcos processes, procedures, ordinances, rules, regulations and standards.

**Section 2.02. Employment.** In conjunction with the Project, the Owner will employ at least 12 full-time and 17 part-time employees locally with estimated wage rates as follows:

- |    |                 |                   |
|----|-----------------|-------------------|
| a. | Manager (2):    | \$65,000 annually |
| b. | Supervisor (2): | \$30,000 annually |
| c. | Staff (25):     | \$22,000 annually |

## **PART 3. ECONOMIC DEVELOPMENT WAIVER PROVIDED BY THE CITY**

**Section 3.01. Waiver of Certain Land Development Code Requirements.** As to the Project, the waiting periods for the sale of alcohol for on-premises consumption under Section 4.3.4.2 (b) (8) of the LDC are hereby waived.

### **Section 3.02. Waiver Limited.**

a. **Applies Only to Owner's Initial CUP.** The waiver granted under Section 3.01 is subject to approval of a request for a CUP by the City's Planning and Zoning Commission. If said request for a CUP is approved, the waiver granted herein shall apply only to such initial CUP and any timely renewals thereof. Upon the expiration, revocation or lapse of said CUP, the waiver granted herein shall automatically terminate, and any future applicant for a CUP related to the sale of alcoholic beverages from the Property, whether the Owner or any other person or entity, shall be required to apply for a new CUP, subject to the then applicable requirements for the approval of such a CUP under the LDC or other ordinance.

b. **Subject to Other Requirements.** The waiver granted in Section 3.01 is subject to all other required approvals of the City under applicable ordinances, rules, regulations and standards. Except as specifically granted herein, the City grants no other waivers of any requirements under the LDC or its Code of Ordinances. The granting of the waiver through this Agreement is not a guarantee, representation or indication by the City regarding the likelihood of approval of any other applications, permits or requests related to the Project, including the initial request for the CUP to which this Agreement relates, or any certificates of occupancy.

## **PART 4. DEFAULT AND TERMINATION**

**Section 4.01. Default and Termination.** The City may declare a default under this Agreement and may terminate this Agreement if the Owner:

- a.** fails to commence and complete the Project within the time specified or according to the specifications in Section 2.01;
- b.** made or makes any representation relied upon by the City in entering into this Agreement or in any request or submission to the City relating to this Agreement or the Project that is false or misleading in any material respect;
- c.** assigns this Agreement without the consent of the City;
- d.** allows ad valorem taxes on the Property or other property in the City owned by the Owner to become delinquent; or
- e.** fails to comply at all times with the terms of the initial CUP issued for on-premises consumption of alcoholic beverages on the Property, as renewed or amended, or the standards for “bona fide restaurants” under Section 4.3.4.2 of the LDC during the first 12 months following the date of issuance of said CUP.

**Section 4.02. Notice of Default and Termination.** If the City Manager reasonably determines that the Owner is in default under Sections 4.01 (a) or (d) the City Manager will notify the Owner in writing of such default, and if the default is not cured within 30 days from the date of the notice, the City Manager may terminate this Agreement, unless reasonable efforts are being made to cure said default and said default cannot reasonably be cured within 30 days. For any default under Sections 4.01 (b), (c) or (e) of this Agreement, the City Manager may terminate the Agreement upon sending written notice of termination to the Owner.

**Section 4.03. Status of Waiver Upon Termination.** The Owner agrees that upon termination of this Agreement, the waiver granted under this Agreement shall be deemed revoked and the Owner's conditional use permit for on-premises consumption of alcoholic beverages may, at the City's sole discretion, be suspended or revoked without a hearing, and without recourse against the City, its officers, agents, or employees.

**Section 4.04. Automatic Termination.** In addition to automatic termination under paragraph 3.02 (a), this Agreement shall terminate automatically upon the denial of any application, permit or request of the Owner related to the Project and the Owner's exhaustion of remedies related thereto making the Project infeasible under applicable laws, ordinances, rules and regulations.

**Section 4.05. Remedies not Exclusive.** In the event of default, either party may exercise its remedies hereunder together with any other statutory or common law remedies, including applicable penal and civil enforcement provisions of the Land Development Code or successor

provisions, or other ordinances. Any failure by one party to enforce this Agreement with respect to one or more defaults by the other party will not waive that party's ability to enforce the Agreement after that time. In the event litigation is commenced under the terms of this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorney fees and costs.

## **PART 5. MISCELLANEOUS**

**Section 5.01. Notices.** All notices required by this Agreement will be delivered to the following by certified mail or confirmed facsimile transmission if either party provides to the other a number for facsimile transmission:

City:

City Manager  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

Owner:

Allen Shy, Owner  
Willy Jack, L.L.C.  
2686 Black Bear Drive  
New Braunfels, Texas 78132

Each party will notify the other party in writing of any change in information required for notice under this paragraph.

**Section 5.02. Assignment.** The Owner may not assign this Agreement or any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City.

**Section 5.03. Applicable Law and Venue.** This Agreement will be construed under the laws of the State of Texas. This Agreement is performable in Hays County, Texas. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

**Section 5.04. No Liability.** The Owner agrees that City assumes no liability or responsibility by approving plans, issuing permits or approvals or making inspections related to the Project.

**Section 5.05. Force Majeure.** A Force Majeure event means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

**Section 5.06. No Waiver of Immunity or Liability.** Nothing in this Agreement, and no action of the City under this Agreement, will constitute a waiver of any immunity of the City to suit or to liability or of any limitations on liability granted by law or the Texas Constitution.

**Section 5.07. No Joint Venture.** It is understood and agreed between the parties that the City and the Owner, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND THE OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES.**

EXECUTED to be effective July 21, 2015.

**CITY OF SAN MARCOS:**

By: \_\_\_\_\_  
Jared Miller., City Manager

**OWNER:**  
**Willy Jack, L.L.C.**

By: \_\_\_\_\_  
Allen Shy, Member