

STATE OF TEXAS           §  
   §  
COUNTY OF BELL       §

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
BETWEEN THE CITY OF KILLEEN, TEXAS  
AND SOUTHERN ROOTS TAP ROOM, LLC**

**THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“Agreement”)**, is made and entered into by and between the CITY OF KILLEEN, TEXAS, a home-rule municipal corporation organized under the laws of Texas (“**City**”) and SOUTHERN ROOTS TAP ROOM, LLC, a Texas limited liability company d/b/a SOUTHERN ROOTS BREWERY (“**Company**”); collectively the “**Parties**.”

**RECITALS**

**WHEREAS**, this Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code;

**WHEREAS**, pursuant to the Warranty Deed, dated June 29, 2023, recorded in volume 13263, page 743 of the Bell County Official Public Records, as instrument number 2023028735, the City purchased and owns the real property legally described as Killeen Original, Block 011, Lot Pt 11, (N 54.5' OF W 110' OF 11) and locally addressed as 324 North Gray Street, Killeen, Texas (the “**Property**”);

**WHEREAS**, the Property is located within the City’s Tax Increment Reinvestment Zone Number Two (“**Zone**”) and the City’s Historic Overlay District (“**HOD**”);

**WHEREAS**, the project plan for the Zone includes making investments in Downtown Killeen to attract businesses that would improve the quality of life in the area;

**WHEREAS**, the purpose of the HOD is to provide for the protection, preservation, and enhancement of buildings within the district, to improve property values, to protect and enhance city attractions for tourists and residents, and to strengthen the economy;

**WHEREAS**, Company intends to expand its operations into the City and desires to acquire the Property in order to operate a restaurant and/or Brewpub, subject to the granting of economic development incentives;

**WHEREAS**, Company intends to add approximately Seven Hundred Thousand Dollars (\$700,000.00) in real property ad valorem tax value and Five Hundred Thousand Dollars (\$500,000.00) in personal property ad valorem tax value to the Property upon Commencement of Operations;

**WHEREAS**, promoting expansion of such operations within the City will promote economic development, stimulate commercial activity, create employment opportunities, and will enhance the property tax base and economic vitality of the City;

**WHEREAS**, section 253.0125 of the Texas Local Government Code authorizes a City to transfer real property to an entity in consideration for an agreement that the property be used to promote a public purpose related to economic development;

**WHEREAS**, the Parties desire to enter into an agreement for the transfer of the Property to the Company; and

**WHEREAS**, for the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits and obligations set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

### **I. Definitions**

In addition to any terms defined elsewhere in this Agreement, the following terms shall have the meanings set out below:

**“Affiliate”** shall mean any person or entity which directly or indirectly controls, is controlled by or is under common control with Company, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

**“Brewpub”** shall have the meaning assigned by Chapter 74 of the Texas Alcoholic Beverage Code.

**“Commencement of Construction”** shall mean that (i) any construction plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of Improvements; (ii) all necessary permits for the construction of such Improvements pursuant to the construction plans have been issued by all applicable governmental authorities; and (iii) Company has issued a notice to proceed to a contractor to commence construction of such Project and has provided a copy to the Executive Director of Development Services, or designee.

**“Commencement of Operations”** shall mean January 1 of the first year following the date on which (i) the Project has been finalized; (ii) the City has issued the appropriate certificate of occupancy; and (iii) Owner has acquired all necessary permits and licenses from all regulatory agencies.

**“Force Majeure”** shall mean circumstances which are beyond the reasonable control of the applicable party, including, but not limited to, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions (including, but not limited to, severe rainstorms, below freezing temperatures, or tornadoes), pandemic or epidemic, labor action, strikes, or similar acts.

**“Improvement Costs”** shall mean investments of approximately One Million Two Hundred Thousand Dollars (\$1,200,000.00) in both real and personal property at the Property in order to complete the Project.

**“Maximum Reimbursement Amount”** shall mean One Hundred Fifty Thousand Dollars (\$150,000.00).

**“Project”** shall mean the design and construction in order to renovate the Property so as to operate a restaurant and/or Brewpub within the building on the Property; more thoroughly described in the attached Attachment A.

## **II. Company’s Obligations**

A. Company agrees to complete the Project in accordance with construction plans approved by the City. Such approval is limited to those approvals required by city ordinance, state law, or federal law, as may be amended from time to time.

B. Company understands that the Property is located within the HOD and agrees to abide by those regulations imposed upon the Property as articulated in Chapter 31, Division 17 of the City of Killeen Code of Ordinances.

C. As good and valuable consideration for this Agreement, Company agrees, subject to events of Force Majeure, to cause Commencement of Construction to occur no later than twelve (12) months from the Effective Date of this Agreement.

D. Company agrees to operate a restaurant and/or Brewpub at the Property and to create a combination of twenty (20) additional full-time and part-time positions at the Property by the first anniversary of Commencement of Operations and to maintain those positions until the fifth anniversary of Commencement of Operations. Any employee transferring from another business owned or operated by Company or an Affiliate may not be considered a new position.

E. Company agrees, for at least five (5) years following Commencement of Operations, to pay an annual average salary of at least Fifty Thousand Dollars (\$50,000.00) to its full-time employees employed by Company at the Property.

F. Company shall make timely payment of ad valorem taxes owed by Company to the City, including, but not limited to real and personal property ad valorem taxes owed on the Property.

G. Upon demand by City, Company agrees to repay any incentive received hereunder in error or in excess of the incentives to which Company is entitled under this Agreement.

H. Company agrees to adopt and follow employment policies, rules and procedures intended to ensure that no discrimination will occur in the creation of full-time positions on the basis of race, creed, color, national origin, sex or disability or other characteristics for which protection is available under applicable local, state and federal anti-discrimination laws. In performing its obligations under this Article, Company shall comply with all applicable laws, regulations, and ordinances.

### **III. Economic Development Incentive**

A. Within ninety (90) days following the Effective Date, the City agrees to sell the Property to the Company via a general warranty deed for Three Hundred Thousand Dollars (\$300,000.00) (the "Consideration"). The payment of the Consideration shall be secured by a vendor's lien (the "Lien"), which shall be recorded with the Bell County Official Real Property Records.

(1) Company shall be solely responsible for all closing and recording costs associated with the sale of the Property.

(2) Payment of the Consideration shall not be due unless, during the Term of this Agreement, the Company shall ever (a) cease to operate the Property as a restaurant and/or Brewpub, (b) attempts to sale, lease, or transfer any interest in the Property without the express written consent of the City Manager, or (c) breaches this Agreement. The above notwithstanding, Company is permitted to use the Property as security to obtain a loan to cover the Improvement Costs in order to complete the Project.

(3) If Company continuously operates a restaurant and/or Brewpub at the Property for five (5) years following Commencement of Operations, the City shall release the Lien with no payment(s) due by the Company.

B. City agrees to reimburse Company up to the Maximum Reimbursement Amount for actual Improvement Costs over a five-year period. Upon Completion of Construction, Company shall provide paid invoices to the City. City will then issue five (5) annual reimbursement payments in the amount of Thirty Thousand Dollars (\$30,000.00) each, with the first reimbursement payment due March 1 following Commence of Operations and each subsequent payment due no later than March 1 the following four years. The Parties understand and agree, that the City's obligation to issue reimbursement payments is conditioned on the continual operation of a restaurant and/or Brewpub at the Property and that no reimbursement payment(s) will be made by the City if (a) the Company ceases operation of a restaurant and/or Brewpub at the Property, (b) the Company is deemed in Default, or (c) if this Agreement is terminated as described in Article V(A)(1)-(3).

### **IV. Default**

A. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or materially breaches or violates any of its representations contained in this Agreement.

B. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced within thirty (30) days of the receipt of such notice and thereafter diligently pursued until completion. Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Article or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies, and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

C. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of Force Majeure, the time for such performance shall be extended by the amount of time of such delay.

## **V. Term and Termination**

A. This Agreement shall become effective upon full execution by the City and Company ("Effective Date") and shall automatically terminate five (5) years following Commencement of Operations ("Term"), or upon the occurrence of one or more of the following:

- (1) by written agreement of the Parties;
- (2) by any party in the event a party breaches any of the terms or conditions of this Agreement and such breach is not cured within the time periods specified; or
- (3) by City if Company suffers an event of bankruptcy or insolvency.

## **VI. Insurance**

A. Prior to Commencement of Construction, Company shall require its general contractor, at its expense, to maintain in full force and effect, the following insurance requirements:

- (1) A policy of insurance for bodily injury, death, and property damage insuring against all claims, demands, or actions relating to the general contractor's performance of its obligations pursuant to this Agreement with (a) a policy of comprehensive general liability (public) insurance with a minimum combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage with an aggregate of not less than \$2,000,000; (b) policy of automobile liability insurance covering any vehicles owned and/or operated by the general contractor, its officers, agents, and employees, and used in the performance of its obligations hereunder with a minimum of \$1,000,000; and (c) statutory Workers' Compensation Insurance covering all employees involved in the performance of its obligations hereunder.

(2) All insurance and certificate(s) of insurance shall contain the following provisions: (a) name the City, its officers, agents, and employees as additional insureds as to all applicable coverage with the exception of Workers' Compensation Insurance; (b) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; and (c) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(3) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service and must be acceptable to the City.

(4) A certificate of insurance evidencing the required insurance shall be submitted prior to beginning construction of a Project.

(5) The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements to existing insurance coverage consistent with the terms of this Article.

## **VII. Miscellaneous Provisions**

A. Recitals. All the above recitals are hereby found to be true and are hereby incorporated into this Agreement as if fully set forth in their entirety.

B. Time of the Essence. Time is of the essence for this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

C. Assignability. This Agreement shall be binding on and inure to the benefits the Parties to it and their respective heirs, executors, administrators, successors, and permitted assigns. This Agreement may not be assigned by Company without the prior written consent of City.

D. Notice. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party at the following addresses:

**If to the City:**  
City of Killeen, Texas  
101 N. College Street  
Killeen, Texas 76541  
Attn: City Manager

**With required copy to:**  
City of Killeen, Texas  
101 N. College Street  
Killeen, Texas 76541  
Attn: City Attorney

**If to the Company:**

Southern Roots Tap Room, LLC  
3939 Bella Vista Loop  
Harker Heights, Texas 76548  
Attn: Dustin Evans

Each party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for, or actually received by, an authorized officer of the City or the Company, as the case may be.

E. Entire Agreement. This Agreement contains the complete and entire agreement between the Parties respecting the matters addressed herein. There is no other collateral oral or written agreement among the Parties that in any manner related to the subject matter of this Agreement. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of each party.

F. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

G. Severability. The provisions of this Agreement are severable and, in the event that any portion of this Agreement is found to be invalid or unconstitutional for any reason, the remainder of this Agreement will not be affected, and this Agreement will be construed as if it had never contained such invalid or unconstitutional provision.

H. Governing Law. This Agreement is a contract made under, and shall be construed in accordance with, and governed by the laws of the United States of America and the State of Texas. Any actions concerning this Agreement shall be brought in either the Texas State Courts of Bell County, Texas or the United States District Court for the Western District of Texas.

I. Exhibits. The exhibit(s) attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. In the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

J. Right of Offset. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court; provided, however (i) City shall provide Company notice within thirty (30) days of determining that any debt is believed lawfully due to City from Company; (ii) Company shall have an opportunity to resolve or pay such debt to City within thirty (30) days after receipt of notice before any offset to amounts payable under this Agreement may occur; and (iii) Company retains all rights to timely and properly contest whether or in what amount any debt is owed to City. The City

may not offset any asserted amount of debt owed by Company against amounts due and owing under this Agreement during any period during which Company is timely and properly contesting whether such amount of debt is due and owing.

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

L. Authority to Contract. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

M. Waiver. Failure of any party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, students, and agents as a result of its execution of this Agreement and performance of the covenants contained herein.

N. Personal Liability of Public Officials. To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

O. Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the Parties agree that such approval or consent shall not be unreasonably withheld or delayed.

P. Construction. This Agreement has been jointly negotiated by the Parties and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

*[Signature page follows]*



**IN WITNESS THEREOF**, the Parties have caused this Agreement to be signed on the date of each signature below. This Agreement shall be **EFFECTIVE** on the date of the last required signature.

CITY OF KILLEEN

**ATTEST**

|              |      |
|--------------|------|
| Kent Cagle   | Date |
| City Manager |      |

|                |      |
|----------------|------|
| Laura Calcote  | Date |
| City Secretary |      |

**SOUTHERN ROOTS TAP  
ROOM, LLC**

|  |      |
|--|------|
| Kristl Evans                           | Date |
| Majority Owner/Chief Financial Officer |      |