

STATE OF TEXAS §

COUNTY OF BRAZOS §

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
VARISCO BUILDING RENOVATION

This Agreement is entered into on this ___ day of _____, 2021, by and between the City of Bryan, Texas (“City”) a home rule municipal corporation and the Varisco Building Redevelopment Group, LLC (“Developer”) a limited liability company created and operating pursuant to the laws of the State of Texas.

WHEREAS, Article III, Section 52 of the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so, but under Section 52-a, the definition of public purpose specifically includes economic development and diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce; and

WHEREAS, Chapter 380 of the Texas Local Government Code was passed to implement the provisions of Section 52-a and permits the governing body of a municipality to establish and provide for the administration of one or more programs, to promote state or local economic development and to stimulate business and commercial activity within the city limits; and

WHEREAS, the Developer is in the process of investing approximately \$8,000,0000 in renovating the Varisco Building, which is addressed as 217 and 219 N. Main St. which is a historic structure in downtown Bryan, with deep roots in the community and has the potential to make a positive contribution to Downtown Bryan; and

WHEREAS, the Property will be occupied by multiple businesses, bringing in at least eight (8) new full-time employment positions, millions of dollars in increased value, and thousands of dollars additional sales tax and ad valorem tax revenue; and

WHEREAS, in order to make the revitalization of this community asset a viable project, Developer is requesting the City’s participation with specific aspects of the redevelopment, to encourage the unique niche that this project is expected to fill; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of this community to spur creation of jobs and expansion of the tax base, as well as enhancement of this historic Property in Downtown Bryan, and that the costs associated with supporting this project are justified in support of that goal.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

A. Developer Obligations

1. *Renovation.* Developer will renovate the Property as described in this section D.7. below. Developer will comply with City codes and ordinances while performing the Renovation, provided that any deviation or deficiency found by the City shall not be deemed a breach of this Agreement if promptly corrected within a reasonable amount of time following notice of same. Developer will

obtain a building permit for the entire Renovation within two (2) months of the effective date and will obtain a CO for the Renovation within fifteen (15) months of the effective date of this Agreement. Developer agrees that for the calendar year following issuance of the CO, the Property will have BCAD Value of at least \$6,000,000. Developer will maintain such minimum BCAD value through the end of the term of this Agreement. Subject to any lawfully available appeal procedure, Developer agrees to timely pay all ad valorem taxes owed on the Property (not including personal property taxes for tenants other than Developer).

2. *Employment.* Within twelve (12) months following issuance of the CO, Developer shall have created eight (8) new full-time employee positions with an aggregate annual payroll of \$450,000. Developer shall maintain such positions and payroll through the end of the term of this Agreement.
3. *Sales Tax Revenue.* Beginning in the first full calendar year after issuance of the CO, Developer shall generate on the Property a minimum amount of sales tax revenue annually in the amounts set forth below:

a. First year -	\$60,000
b. Second year -	\$95,000
c. Third year -	\$100,000
d. Fourth year -	\$125,000
e. Fifth year -	\$130,000
f. Sixth year (if applicable) -	\$140,000

4. *Compliance Certificate.* Starting the first full calendar year after issuance of the CO, each December, Developer shall submit an annual Compliance Certificate documenting that Developer is meeting or has met the benchmarks set forth in this Agreement. The Compliance Certificate must be accompanied by the following supporting documentation:
 - a. a tax receipt for the given year as set forth above showing that ad valorem taxes have been paid on the Property and that the BCAD Value is at least \$6,000,000;
 - b. copies of the preceding year's "Reimbursing Employer's Quarterly Reports" (or similar reports by whatever name) required by be filed with the Texas Workforce Commission (or successor agency) for purposes of administering the Texas Unemployment Compensation Act (Tex. Labor Code, Ch. 201 et. seq. as may be amended); and
 - c. a tax receipt showing that sales taxes generated on the Property have been paid and have met the requirements for the given year as set forth above.

Developer is responsible for obtaining this documentation for the City and failure to obtain same is a breach of this Agreement. This information will be used by the City to verify compliance with the terms of this Agreement and provide a basis for rebates. The City may assist, as needed and when requested by Developer, with any applications to the Texas Comptroller of Public Accounts or other state or local agency for access to this information, but it remains Developer's responsibility.

B. Grants, Waivers, & Other Benefits

1. *Permit fees.* The City agrees to waive fees up to a maximum \$30,000.00 for all of Developer's building, mechanical, plumbing, or electrical permits for work performed renovating the Property

during the term of this Agreement. This does not include build out or other work by tenants. The total aggregate value of fees waived may not exceed \$30,000.00.

2. *Façade Improvement Grant.* The City will offer a grant of up to a maximum \$200,000 as reimbursement for façade improvements. Prior to receiving any payments for this grant, Developer must comply with the terms, conditions, and requirements of City's Façade Improvement Grant program with the exception that no further City Council approval is required. This includes but is not limited to the requirement that the façade improvements must be completed in accordance with City of Bryan ordinances and documentation of the cost of same attached to a written request for reimbursement submitted to the City.
3. *Life Safety Grant.* The City will offer a grant of up to a maximum \$100,000 as reimbursement for qualified life safety improvements required by the Building Code and Fire Code. Prior to receiving any payments for this grant, Developer must comply with the terms conditions, and requirements of City's Life Safety Grant Program (City of Bryan Resolution No. 3853), with the exception that no further City Council approval is required. This includes but is not limited to the obtaining a CO for life safety improvements in accordance with City ordinances and documentation of the cost of same attached to a written request for reimbursement submitted to the City.
4. *Roof Top Bar/Venue Rebate.* Provided that Developer has satisfied the benchmarks set forth in Sections A.1-A.3 and completed the roof top bar/venue portion of the Renovation in compliance with City codes and ordinances, Developer is entitled to a rebate of fifty percent (50%) of the City's share of ad valorem and sales tax generated on the Property. Developer may request the rebate starting the first full year following issuance of a CO for the Renovation. The request for rebate must be in writing accompanied by a Compliance Certificate as required by Section A.4, and documentation of the taxes paid to the City. For a given year, the request for payment, and all required documentation, must be received by March 30th of the following year or it is waived. This section survives termination of this Agreement but expires on the earlier of March 30th, 2029 or when the aggregate amount of rebate for the rooftop bar totals \$150,000.
5. *Funding.* This Agreement is subject to annual appropriation for same by the City Council. All funds to be paid by the City are payable from lawfully available funds.

C. Term, Breach, & Termination

1. This Agreement shall be effective when executed by all parties on the date the last party signs and shall expire December 30, 2029.
2. Developer's failure to comply with any provision of this Agreement, including but not limited to failure to maintain the BCAD Value, employment benchmarks, or sales tax revenue required by Sections A.1.-A.3., is a breach of this Agreement. Upon City's written notification to Developer of the breach, Developer shall have thirty (30) days to cure same. Failure to timely cure such a breach shall be an event of default, and the City may terminate this Agreement and withhold any further payments or incentives.
3. In addition to City's right to terminate this Agreement, and any other remedies available at law or in equity, when Developer is in default on this Agreement, Developer shall repay City the grant payments already made and pay City the value of permit fees waived.

D. Definitions

1. BCAD means the Brazos Central Appraisal District.
2. BCAD Value means the taxable appraised value according to BCAD, for the real property and improvements associated with BCAD property ID #22466 and 22468. It does not include personal property accounts.
3. City means the City of Bryan, Texas.
4. CO means a certificate of occupancy demonstrating final completion of any and all permitted work related to the Renovation in compliance with City codes and ordinances. The term does not include any permitted or unpermitted work by tenants.
5. Developer means Varisco Building Redevelopment Group, LLC and includes any affiliates, subsidiaries, or parent companies.
6. Property means the Varisco Building, collectively addressed as 217 and 219 N. Main Street, and more particularly described as Part of Lot 4 and all of Lot 5 Block 103, Bryan Original Townsite,
7. Renovation means the renovation of the structures at 217 and 219 N. Main Street, including the basement, first floor, mezzanine, top floor and roof top of the Varisco Building on the Property, specifically including but not limited to, façade improvements, life safety improvements, and a roof top bar/venue. A more detailed description of the work is attached hereto as Exhibit A, and incorporated herein for all purposes.

E. Miscellaneous

1. Disclosure of Interested Parties. Per Section 2252.908 of the Texas Government Code, Developer must fill out a conflict of interest form (“Disclosure of Interested Parties”) at the time the Agreement is signed. For further information please go to the Texas Ethics Commission website via the following link <https://www.ethics.state.tx.us/filinginfo/1295/>.
2. Boycotts Israel. Developer represents and warrants that it is a Company that does not Boycott Israel, as those terms are defined by Texas Government Code Chapter 2271, at the time of the execution of this Agreement and that, except to the extent otherwise required by applicable federal law, will not Boycott Israel during the term of this Agreement.
3. Employment of Undocumented Workers. During the term of this Agreement, Developer agrees not to knowingly employ any Undocumented Workers and if convicted of a violation under 8 U.S.C. Section 1324a (t), Developer shall repay the amount of any Public Subsidy conferred by this Agreement, within 120 days after the date Developer is notified by the City of such violation, plus interest at the rate of five percent (5%) compounded annually from the date of violation until paid. Developer is not liable for a violation of this section by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts. The terms Undocumented Worker and Public Subsidy shall have the meaning assigned by Texas Government Code section 2264.001.
4. Government Code Chapter 2252 Subchapter F. Developer represents and warrants that it is not a Company with which the City is barred from entering into a Governmental Contract pursuant to Texas Government Code sections 2252.152 and/or 2252.153 as those terms are defined in section 2252.151.

5. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties:

If to City: City of Bryan
 c/o City Manager
 P.O. Box 1000
 Bryan, Texas 77805

If to Developer: Varisco Building Redevelopment Group, LLC
 c/o Nancy Finney
 2501 Earl Rudder Freeway S, Ste 100
 College Station, Texas 77845

6. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Developer shall not assign this Agreement without the written approval of the City Council, which approval is within Council's sole discretion. An assignment to a subsidiary or affiliate company of Developer shall not be prohibited under the section.
7. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
8. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
9. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
10. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
11. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
12. No Waiver. City's delay or failure to take action to enforce this Agreement in the event of Developer default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.


13. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
14. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
15. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
16. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.
17. Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance by either Party of any obligation hereunder is delayed by reason of an event of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same for the time and to the extent necessary to allow the affected Party to overcome the event of Force Majeure and resume performance thereof. The Party claiming delay of performance as a result of an event of Force Majeure shall deliver written notice of the commencement of such delay to the other Party as soon as reasonably practicable after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of delay caused by a Force Majeure event, the claiming Party shall not be entitled to extend the time for performance as provided herein. For the purposes of this section, the term "Force Majeure" means any act that (a) materially and adversely affects the affected Party's ability to perform the relevant obligations under this AGREEMENT or delays such affected Party's ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party's fault or negligence and (d) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts, including the expenditure of any reasonable sum of money.
18. Basic Safeguarding of Information Systems. Developer shall apply basic safeguarding requirements and procedures to protect the Developer's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016). The substance of this clause shall be included in any subcontracts entered into in which the subcontractor may have City contract information residing in, or transmitting through, its information system.

[signatures to follow]

CITY OF BRYAN, TEXAS

**VARISCO BUILDING
REDEVELOPMENT GROUP, LLC**

Andrew Nelson, Mayor



John W. Clanton, Manager

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Thomas A. Leeper, Interim City Attorney

EXHIBIT A

The renovation at the Varisco building is one of the most significant in Downtown Bryan. Hush & Whisper Distilling will occupy the first floor of the historic Varisco building. Main Street's storefront windows will look into a completely new and exquisitely designed tasting room with seating for 125. The centerpiece of the room is the 30-foot-tall, polished copper Vendome column still which will output 3,000 barrels of whiskey annually. 14,000 gallons of stainless-steel tanks will fuel the still from the annex at 217 N Main, where spirit making activities start and finish.

In addition, the five other floors of the Varisco building will be renovated and updated, adding 25,000 square feet of prime office space for Downtown Bryan. Energy-efficient lighting, electrical systems, HVAC will be installed or updated for modern standards. Sprinklers and fire control systems will be extended to the upper floors. The same design principles that won awards at 120 Main Street will be used in creating functional and well-designed offices in the Varisco building.

The most significant life safety and façade improvements include:

- Extending the fire sprinkler system through the upper five floors of the Varisco tower
- Renovating the canopy in front of both 219 and 217 N Main
- Updating the existing storefront at 217 N Main
- Replacing the broken panels of glass at the storefront of the Varisco Tower
- Repairing the damaged windows and frames on the upper floors of the Varisco Tower facing Main Street
- Cleaning the historic terracotta tile
- Removal of the bars on the Varisco tower windows
- Repainting the ledges, window ledges, and lintels