

THE STATE OF TEXAS     §  
  §  
  §  
COUNTY OF BRAZOS     §

**CHAPTER 380 PROGRAM**  
**AGREEMENT FOR**  
**ECONOMIC DEVELOPMENT**  
**INCENTIVES**

This Agreement (the “Agreement”) is entered into by and between the **CITY OF BRYAN**, a home-rule municipal corporation of Brazos County, Texas, hereinafter referred to as the “**City**”, and **SMBG BRYAN, LLC**, hereinafter called “**Developer**”. **City** and **Developer** may be referred to jointly herein as the “Parties” and individually as a “Party.”

**RECITALS**

**WHEREAS, Developer** holds a Ground Lease from **City** on a portion of the Travis Bryan Midtown Park to undertake the development, construction, operation, and maintenance of a multi-story state of the art bowling sports centered family recreational and entertainment complex with pickleball and with related parking and infrastructure (the “Project”); and

**WHEREAS,** the Parties intend the Project not only to enhance the features and recreational scope of the Travis Bryan Midtown Park but also to promote the economic development of the **City** by increasing ad valorem and sales tax, and to provide employment opportunities to serve the citizens and visitors to the **City**; and

**WHEREAS,** the Ground Lease, which specifies **Developer** deadlines and deliverables to accomplish the stated purposes, is an integral part of the economic development program implemented through the Ground Lease; and

**WHEREAS,** the Ground Lease requires the Project Improvements to achieve a Minimum Appraised Value of \$19,000,000.00 as specified at Section 9.1.1 of the Ground Lease; and

**WHEREAS, Developer** has secured financing from a Qualified Lender as required under the Ground Lease and has commenced construction of the Project; and

**WHEREAS,** the Qualified Lender has advised the Parties of timing issues for its fully funding of the loan which it has committed to **Developer**, and such issues are beyond control of **Developer** or **City**, and **Developer** will be forced to suspend construction activity pending Qualified Lender’s fully funding of the loan; and

**WHEREAS,** the **City** is authorized by the Texas Constitution and Chapter 380 of the Texas Local Government Code to make loans and grants of public resources to promote state and local economic development and to stimulate business and commercial activity in Bryan; and

**WHEREAS**, it is necessary for the successful implementation of the herein described economic development program allow for the timely and uninterrupted construction of the Project while the Qualified Lender completes its tasks; and

**WHEREAS**, the Parties wish to provide a grant in the form of a Chapter 380 loan to **Developer** in the amount of Two Million Dollars and No/100 (\$2,000,000.00) to be repaid no later than two (2) years from its funding, and in exchange, **Developer** will continue uninterrupted construction of the Project without awaiting final full funding by the Qualified Lender; and

**WHEREAS**, the City Council has determined that it is in the best interest of the **City** to enter into this Agreement in order to encourage and assist the timely development of the PROJECT, which will in turn expand the ad valorem and sales tax base, create jobs, stimulate business and commercial activity, and spur economic development in the City of Bryan,

**NOW THEREFORE**, the **City** and **Developer**, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

**Section 1. Definitions.**

1.1 Capitalized terms in this Agreement not otherwise defined herein shall have the same meanings as defined in the Ground Lease.

1.2 “Ground Lease” or “Lease” means the Ground Lease between the **City** and **Developer** dated November 15, 2022, as amended by that First Amendment to Ground Lease, dated July 11, 2023, and incorporated herein by this reference.

**Section 2. Term.**

2.1 This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate on the date all obligations under this Agreement have been fulfilled unless earlier terminated.

**Section 3. Developer’s Requirements.** In consideration of the **City** entering into this Agreement providing for a Grant to **Developer** under the terms and conditions set forth herein, **Developer** agrees to:

3.1 Continue uninterrupted construction of the Project.

3.2 Cause the completion of the Project Improvements Work, the Substantial Completion Of The Project Improvements, and the Commencement Of Operations to occur, by the dates set forth in the Ground Lease, as same may be subject to extension thereunder.

3.3. Execute a promissory note in the form attached hereto as Exhibit “A” attached hereto, which note shall include the guarantee of Schulman’s Movie Bowl Grille, LLC.

3.4. Within forty-five (45) days from execution of this Agreement, execute an amendment to the Ground Lease to:

- a. amend section 9.1.1 to increase the Minimum Appraised Value requirement to Twenty-four Million and No/100 Dollars (\$24,000,000.00);
- b. amend section 8.2 to require four (4) indoor climate controlled pickleball courts, two covered pickleball courts, and one outdoor pickleball court in accordance with plans as approved in writing by City; and
- c. amend section 8.3 to state that “Tenant shall include among the Improvements an amphitheater with stage area of an appropriate size to host bands and live entertainment and audience lawn of approximately 20,000 square feet, yard games including cornhole, stacking blocks, bocce ball, shuffleboard, and small playground as well as restrooms and an outdoor cantina capable of providing food and beverage for outdoor patrons”;
- d. expend at least Thirty-Seven Million and No/100 Dollars (\$37,000,000.00) as a minimum investment in fulfilling the Project.

3.5 During the Term of this Agreement, **Developer** shall not commit an Event of Default of the Lease, as such is defined under the terms of the Lease.

3.6 During the Term of this Agreement, **Developer** shall not allow the ad valorem taxes owed to **City** on the Leased Premises, the Project Improvements, or any property owned by **Developer** and located within the **City of Bryan** to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall **Developer** fail to render for taxation any property owned by **Developer** and located within the **City of Bryan**.

3.7 The design and construction of the Project Improvements on the Leased Premises shall comply with all ordinances of the **City** applicable to the Project.

3.8 **Developer** covenants and certifies that **Developer** does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01 (4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if **Developer** is convicted of a violation under 8 U.S.D. Section 1324a(f), **Developer** shall be required to repay to the **City** the grants provided in Section 4 of this Agreement, plus 10% per annum from the date the reimbursement was made. Repayment shall be paid within 120 days after the date **Developer** is convicted of a violation under 8 U.S.D. Section 1324a(f).

#### **Section 4. Grants by City.**

4.1 In consideration for **Developer** agreeing to uninterrupted development of the Project in accordance with the terms of the Ground Lease and this Agreement, the **City** will pay a grant to **Developer** in the form of a Chapter 380 loan in the total amount of Two Million and No/10 Dollars (\$2,000,000.00) according to the terms herein.

4.2 **Developer** shall repay the loan, plus accrued unpaid interest, in full in lump sum at the expiration of twenty-four (24) months from execution of a promissory note for the loan.

4.3 The loan shall accrue interest monthly as follows:

- a. months 1 through 9 at zero percent (0.0%) annual,
- b. months 10 through maturity at eight percent (8.0%) annual.

**Section 5. Condition Precedent.**

5.1 **City's** obligation to make the Grant provided for in Section 4 of this Agreement, is contingent and conditioned upon **Developer** must (i) obtain a guarantee for repayment of the loan from Schulman's Movie Bowl Grille, LLC, and execute a promissory note in the form attached hereto as Exhibit "A," and (ii) be in compliance with the Ground Lease (hereafter referred to as the "Condition Precedent"). If the Condition Precedent is not satisfied, and has not been waived in writing by the **City**, the **City** shall have the right to terminate this Agreement, in which case this Agreement shall immediately terminate, cease and become null, void, and of no further force or effect.

**Section 6. Indemnification.**

6.1 **Developer** does hereby agree to waive all claims, release, indemnify, defend and hold harmless the **City**, and all of their officials, officers, agents, and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands, or causes of action including all expenses of litigation and/or settlement, court costs, and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of **Developer**, its officers, agents, or employees arising out of or in connection with the performance of this Agreement, and **Developer** will at its own cost and expense defend and protect the **City** from any and all such claims and demands. Such indemnities shall apply whether the claims, losses, damages, suits, demands, or causes of action arise in whole or in part from the negligence (but not the gross negligence or intentional misconduct) of the **City**, its officers, officials, agents, or employees. It is the express intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by **Developer** to waive all claims, release, indemnify, defend, and hold harmless the **City** from the consequences of the **City's** own ordinary negligence (but not gross negligence or intentional misconduct), whether that negligence is a sole or concurring cause of the injury, death or damage.

6.2 The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the **Developer** or any contractor or subcontractor under workman's compensation or other employee benefit acts.

**Section 7. Access to Books and Records.**

7.1 The **Developer** agrees to provide the **City** access to books and records of the **Developer** during regular business hours upon reasonable notice. The **City** shall have the right to require the **Developer** to submit any necessary information, documents, invoices, receipts, or other records to verify Qualified Project Costs incurred by **Developer** and the completion of construction of the Project. **Developer** shall maintain such records for a period of five (5) years after termination of this Agreement.

**Section 8. Force Majeure.**

8.1 It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligation hereunder is delayed by of any act of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

8.2 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.

8.3 Subject to the satisfaction of the conditions set forth in 8.2(a) through 8.2(d) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning, and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage, or terrorism; (iii) transportation disasters, whether by ocean, rail, land, or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of the **City** in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party or brought about by the breach of its obligations under this Agreement or any Applicable Law; and (vii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) any strike or labor dispute involving the employees of the **Developer** or any Affiliate of the **Developer**, other than industry or nationwide strikes or labor disputes; or (C) weather conditions which could reasonably be anticipated by experienced contractors operating at the relevant location.

**Section 9. Default and Termination.**

9.1 (a) A default shall exist under this Agreement if either Party fails to perform or observe any material covenant contained in this Agreement. The non-defaulting Party shall immediately notify in writing the defaulting Party upon becoming aware of any condition or event constituting a default. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting Party requires or proposes to require with respect to curing the default.

(b) It shall be an immediate default of this Agreement if an Event of Default under 24.1.1 of the Ground Lease shall occur, and this Agreement shall immediately terminate. **Developer** shall repay the **City** within thirty (30) days of written notice of an Event of Default under the Lease, the \$2,000,000 loan, including all accrued unpaid interest.

9.2 If a default shall occur and continue after thirty (30) days' notice of the same, the non-defaulting Party may, at its option, pursue any remedies it may be entitled to, at law or in equity, in accordance with Applicable Law, without the necessity of future notice to or demand upon the defaulting Party.

9.3 In the event the **Developer** defaults on its performance of any of the **Developer** Obligations under Section 3 of this Agreement, after receipt of notice and expiration of the cure period, if such default is uncured, this Agreement may be terminated in writing by the **City** and the **City** is entitled to the re-payment from Developer of the unpaid principle and accrued unpaid interest of the loan which is subject of the Grant described in this Agreement. **Developer** shall make payment to the **City** within thirty (30) days of presentment of written notice of termination. City's ability to seek repayment of the Grant and **Developer's** obligation to repay shall survive the termination of this Agreement. An Assignment by **Developer** of the Ground Lease will not relieve **Developer** of its obligations and liabilities under this Agreement.

#### **Section 10. Miscellaneous.**

10.1. 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 prior written approval of the City Council, except that the **Developer** may assign its rights and responsibilities hereunder without the prior written consent of the **City** to a **Developer Affiliate** to which **Developer** assigns all of its rights and obligations as Tenant under the Ground Lease in accordance with the terms thereof; provided, however, such assignee shall agree in writing to assume all of the **Developer's** obligations under this Agreement and such written agreement shall be in a form reasonably acceptable to the **City**. The **Developer** shall promptly provide the **City** with a copy of the assignment instrument and assignee's written agreement to assume **Developer's** obligations under this Agreement.

10.2. 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. Notice shall be given to the following:

If to **City**: City Manager:  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

If to **Developer**:

SMBG BRYAN, LLC  
c/o Chief Operating Officer  
4565 Lakeshore Drive  
Waco, Texas 78710  
Phone: (254) 262-4400  
Email: mschulman@moviebowlgrille.com

10.3. 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.

10.4. 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.

10.5. No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the Parties.

10.6. Sole Agreement. This Agreement together with the Ground Lease 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.

10.7. 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.

10.8. 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.

10.9. No Waiver. **City's** failure to take action to enforce this Agreement in the event of **Developer's** 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.

10.10 Incorporation of Recitals. The Parties agree that the recitals contained in the preamble to this Agreement are true and correct and are hereby incorporated herein as part of this Agreement.

10.11 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.

10.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

10.13 Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**The Undersigned Authorized Representatives of the Parties have executed this Agreement to be effective on this the \_\_\_\_ day of \_\_\_\_\_, 2024 (“the Effective Date”).**

**CITY OF BRYAN, TEXAS:**

**SMBG BRYAN, LLC**

\_\_\_\_\_  
Bobby Gutierrez, Mayor

\_\_\_\_\_  
Mark Schulman, Manager

**ATTEST:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas A. Leeper, City Attorney



**EXHIBIT "A"**  
**PROMISSORY NOTE**

**PROMISSORY NOTE**  
**SMBG BRYAN, LLC**

**Effective Date:** July 18, 2024

**Maker:** SMBG Bryan, LLC, a Texas limited liability company  
510 N. Valley Mills Dr., Ste. 500  
Waco, TX 76710

**Lender:** City of Bryan, Texas, a home-rule municipal corporation  
300 S. Texas Ave.  
Bryan, TX 77803

**Guarantor:** Schulman's Movie Bowl Grille, LLC, a Texas limited liability company  
4565 Lake Shore Drive  
Waco, TX 76710

**Principal Amount:** TWO MILLION DOLLARS (\$2,000,000.00)

**Interest Rate (no default):** EIGHT PERCENT (8%) APR (after 9 months)

**Maturity Date:** July 17, 2026

1. Within ten (10) days of the Effective Date of this Promissory Note, Lender will tender to Maker the Principal Amount via wire transfer. Maker will ensure that its bank of choice provides wire instructions to Lender within five (5) days of the Effective Date.
2. Maker promises to repay the Principal Amount on or before two (2) years after the Effective Date of this Note. There is no penalty for pre-payment.
3. The Note will not accrue interest for the first nine (9) months of this Note, expiring April 17, 2025. Afterwards, interest will accrue at the rate of eight percent (8%) per annum, compounding monthly on the 17<sup>th</sup> of each subsequent month. In the event the Principal Amount, and any accrued interest, is not paid in full by the Maturity Date, the interest on the amount owed will increase to the maximum amount allowed by law.
4. The Principal Amount, and any accrued interest, are due and payable on the Maturity Date, and failure to do so is a breach and a default of this Note, without any need for Lender to provide notice or an opportunity to cure to Maker or Guarantor. Maker and Guarantor waive all demands for payment, presentation for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, protests, and notice of protest to the extent permitted by law. Maker and Guarantor are jointly and severally liable for the obligations under this Note.
5. In the event of a breach, if this Note is given to an attorney for collection, regardless of whether the attorney is in-house counsel or outside counsel, Maker and/or Guarantor shall pay the Lender all costs of collection, including reasonable attorney's fees and court costs, in addition to other amounts due. The Note is considered given to an attorney for collection if any action is taken to enforce the Note, regardless of whether any lawsuit is filed.
6. Interest on the debt evidenced by this Note shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest

**EXHIBIT "A"**  
**PROMISSORY NOTE**

in excess of the maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. In the event of a conflict between this provision and any other portion of the Promissory Note, this provision is controlling.

7. Each Maker and Guarantor is responsible for all obligations represented by this Note. While Maker is primarily responsible for satisfaction of the obligations under this note, any reference to "Parties" includes Guarantor as well as Maker within its meaning.
8. Successors and Assigns. This Note is not assignable without prior written permission of all parties. No purported assignment is effective unless all successors and assigns agree to be bound to the provisions stated herein.
9. Severability. If any provision of this Note is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective while this Note is in effect, such provision shall be automatically deleted from this Note and the legality, validity, and enforceability of the remaining provisions of this Note shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Note 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.
10. Texas law to apply. This Note 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 Note shall be in a court of appropriate jurisdiction in Brazos County, Texas.
11. Sole Agreement. This Note and the Chapter 380 Economic Development Agreement between Maker and Lender of even date herewith constitute the sole and only agreements of the Parties hereto respecting the debt that is evidenced by this Note and supersedes any prior understandings or written or oral agreements between the parties. This Note does not alter, amend, supersede, void, or invalidate the existing Ground Lease entered into between the Parties.
12. 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.
13. Rights and Remedies Cumulative. The rights and remedies provided by this Note 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.
14. No Waiver. Failure of any party, at any time, to enforce a provision of this Note, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Note, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Note shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.
15. Legal Construction. The paragraph headings contained in this Note are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Words of any gender used in this Note 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. Each party to this Note has had an opportunity to review the terms contained herein with counsel and therefore

