

## **ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

This Economic Development Incentive Agreement (the “Agreement”) is made by and between the City of Carrollton, Texas (“City”), and Mary’s Southern Kitchen, Inc., (“Company”), acting by and through their respective authorized officers and representatives.

### **WITNESSETH:**

**WHEREAS**, the Company is engaged in the restaurant business, delivering homemade, Southern cooking at competitive prices and will occupy approximately 2,400 square feet of existing property located at 1500 W Hebron Parkway, #102 (the “Premises”), in the City of Carrollton; and

**WHEREAS**, Company has entered into a lease for the Premises for a period not less than five (5) years during which time, Company will establish and create jobs that benefit the local economy and stimulate commercial activity within Carrollton; and

**WHEREAS**, the Company will invest approximately \$400,000 in building out the Premises for its use as a restaurant; and

**WHEREAS**, the City is authorized by Texas Local Government Code § 380.001, *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, the City has a Specialty Retail and Restaurant Incentive Program, adopted in compliance with Texas Local Government Code chapter 380, to provide financial incentives in exchange for the creation of jobs; and

**WHEREAS**, the City Council of the City of Carrollton finds that it is in the best interest of the City to make a grant to the Company as an economic development incentive to locate its product development and research and development facility in the City of Carrollton as set out herein.

**NOW THEREFORE**, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Company, intending to be legally bound, hereby covenant and agree as follows:

### **Article I Definitions**

For purposes of the Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company’s operations in the City. An economic downturn shall not constitute an Event of Force Majeure.

## **Article II Term**

The term of this Agreement shall begin on the Effective Date and continue until April 30, 2016 (the “Term”), unless sooner terminated as provided herein.

## **Article III Obligations of Company**

In consideration for the grant of public funds as set forth in Article IV below, the Company agrees to perform the following:

3.1 **Occupancy of Property.** On or before December 31, 2015, subject to extension for Events of Force Majeure, the Company will occupy approximately 2,400 square feet of existing property located at 1500 W Hebron Parkway, #102 and will construct any necessary improvements, as evidenced by the Company obtaining a Certificate of Occupancy (or applicable equivalent); and

3.2 **Performance.**

- (A) Company covenants and certifies that Company does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code.
- (B) Company shall not fail to render for taxation any property located within the City of Carrollton, nor shall it allow the ad valorem taxes owed to the City on any property owned by Company and located within the City of Carrollton to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.
- (C) Company shall not allow any other assessed municipal fees, bills, or fines to become delinquent.

## **Article IV Economic Development Grant**

4.1 **Grant.**

City agrees to provide the Company with a grant in an amount not to exceed One Hundred Thousand and No/100 Dollars (\$100,000) as reimbursement for building costs for tenant improvements.

4.2 **Grant Payment Requirements and Schedule.**

The grant payment, representing up to 50% of the cost of tenant improvements, will be remitted to Company within thirty (30) days of receipt of a written request, with documentation evidencing payment of such fees, and a certificate of occupancy for the Premises.

**Article V Default; Termination**

5.1 **Events of Termination.** This Agreement terminates upon any one or more of the following:

- (1) By expiration of the Term; or
- (2) If Company terminates or breaches the lease for the Premises; or
- (3) If a party materially defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured, following written notice, and opportunity to cure, as set forth above.

5.2 **Effect of Termination/Survival of Obligations.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any rights, obligations or default(s) that existed prior to such termination or as otherwise provided herein and those rights, liabilities and obligations shall survive the termination of this Agreement, including, maintenance of records, and access thereto.

**Article VI Retention and Accessibility of Records**

6.1 **Records.** Company shall maintain the fiscal records and supporting documentation related to the job creation and annual salaries associated with this Agreement. Company shall retain such records, and any supporting documentation for the period required by Texas laws and regulations applicable to municipalities and/or economic development incentives.

6.2 **Accessibility.** Company gives the City, its designee, or any of their duly authorized representatives, reasonable access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal property belonging to or in use by the Company pertaining to the grant provided under this Agreement (the "Records") upon receipt of ten (10) business days

written notice from the City. The City's access to the Company's books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the City. In no event shall the City's access to the Records include any access to any personal and/or medical data of any employees of Company.

The Company shall not be required to disclose to the City any information that by law the Company is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require the Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of the Company. The rights to access the Records shall terminate three (3) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to terminate this Agreement as provided for in Section 5.1 above, or any portion thereof, for reason of default. All Records shall be retained by the Company for the period required under Texas laws and regulations applicable to municipalities and/or economic development incentives. The Company agrees to maintain the Records in an accessible location.

#### **Article VII Assignment**

This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned or managed affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) in the preceding paragraph, the Company must obtain the prior approval of the City through its City Manager, which will not be unreasonably withheld or delayed, and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment. In the event such approval is withheld, and a portion of the Property is transferred, such transfer shall not be a default hereunder, but such portion of the Property shall no longer be subject to this Agreement.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty (30) days prior to the effective assignment date. The City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

#### **Article VIII Miscellaneous**

8.1 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture

among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement. It is understood and agreed between the parties that the Company, in performing its obligations thereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties, and Company agrees to indemnify and hold the City harmless therefrom; it is further understood and agreed among parties that the City, in performing its obligations hereunder, is acting independently, and the City assumes no responsibilities in connection therewith to third parties

8.2. **Notice of Bankruptcy.** In the event the Company files for bankruptcy, whether involuntarily or voluntary, the Company shall provide written notice to the City within three (3) business days of such event.

8.3. **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

8.4. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:  
City of Carrollton, Texas  
Attention: City Manager  
P.O. Box 110535  
Carrollton, TX 75011

With a copy to:  
City of Carrollton, Texas  
Attention: City Attorney  
P.O. Box 110535  
Carrollton, TX 75011

If intended for the Company:  
Mary's Southern Kitchen, Inc.  
Attn: Mary Davis, Owner  
1500 W Hebron Parkway, #102  
Carrollton, Texas 75010

8.5. **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

8.6. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that

might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Dallas County, Texas.

8.7. **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

8.8. **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.9. **Recitals.** The recitals to this Agreement are incorporated herein.

8.10. **Authorized to Bind.** The persons who execute their signatures to this Agreement and any certifications related to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

8.11. **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

**CITY OF CARROLLTON, TEXAS**

\_\_\_\_\_  
Krystle Nelinson, City Secretary

\_\_\_\_\_  
Leonard Martin, City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Meredith Ladd, City Attorney

\_\_\_\_\_  
Thomas Latchem, Director of Econ. Dev.

