

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Carrollton, Texas (the "City"), a Texas municipality, and Oldfield David E & Ilene Evelyn 2009 Revocable Trust ("Owner"), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Owner has certain real property, including a building, commonly known as 1017 South Broadway Street, located in downtown Carrollton (the "Property"), as generally depicted in Exhibit "A", attached hereto and incorporated by reference, as if written word for word herein; and

WHEREAS, Owner has entered into a lease with Cuban Dulceria International Bakery ("CDIB") to locate a restaurant on the Property, furthering a City goal of increasing amenities to residents; and

WHEREAS, Owner intends to rehabilitate the existing building on the Property, which is not suitable for CDIB's proposed restaurant activities; and

WHEREAS, Owner will construct all necessary on-site improvements to serve the Property; 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 Council of the City of Carrollton finds that it is in the best interest of the City to make a grant to the Owner as an economic development incentive to use for rehabilitating the building on the Property, 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 Owner, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this 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 Owner’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 February 26, 2016 (the “Term”), unless sooner terminated as provided herein.

Article III Obligations of Owner

In consideration for the grant of public funds as set forth in Article IV below, the following obligations are agreed to by the Owner:

3.1 **Development of Property.** Subject to extension for Events of Force Majeure, the Owner agrees: (A) to begin construction on the improvements, as set forth below, no later than August 31, 2015, as evidenced by Owner or Lessee obtaining a building permit for the Property; and (B) that build out of the Property will be substantially complete by November 1, 2015, as evidenced by a Certificate of Occupancy (or applicable equivalent) for the building located thereon; provided, however, an extension of this date may be granted based upon market conditions; and

3.2 **Performance.** Owner agrees and covenants that it will diligently and faithfully, in a good and workmanlike manner, construct improvements and/or rehabilitate the structure on the Property in order to facilitate the occupancy of the Property by CDIB; and

3.3 **Improvements.** Owner shall, during the term of this Agreement, make real property improvements in and on the Property to consist of the rehabilitation of an existing structure necessary for its use and occupancy as a restaurant, as generally depicted in Exhibit “A”, as such plans may be further amended and approved pursuant to applicable laws, and such other improvements on the Property as may be owned and managed by Owner.

Article IV Economic Development Grant

4.1 Grant.

(A) The City will reimburse Owner for the “Improvement Costs” with the City’s share being an amount not to exceed Six Thousand Five Hundred Dollars (\$6,500.00). For the purposes of this Section 4.1(A), Improvement Costs shall include costs related to new signage for the restaurant. The City will remit reimbursement within fifteen (15) days of the receipt of written invoice or documentation evidencing the total actual costs of the work performed prior to the date of such request, including any necessary supporting documentation that may be reasonably requested by the City.

(B) The Property is located within a Neighborhood Empowerment Zone. Therefore, in addition to the reimbursement provided for in Subsection (A) above: (i) building permit and inspection fees for the improvement and other contractor registration and licensing are included as part of this incentive package; and (ii) all applicable City health inspection permit fees will be included as part of this incentive package. All necessary building permits, contractor registrations and licensing must be obtained prior to the commencement of any construction work.

(C) The Property is located within the Transit Center Urban Core Zoning Sub-District. Therefore, on-street parking which is available along the frontage lines of a development site may be counted toward the parking requirement for the development. Furthermore, additional parking space requirements above those that can be met by on-site or curb-side parking are subject to payment of cash-in-lieu of parking fee to the City. Any required payment of cash-in-lieu of parking fees shall be included in this incentive package.

4.2 **Grant Payment Requirements and Schedule.**

Subject to compliance with Article III above, Owner may submit itemized documents setting forth the Improvement Costs and request grant funds in accordance with the terms of Section 4.1. City will reimburse Owner within fifteen (15) days of receipt of appropriate documentation evidencing the requested reimbursement.

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 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 obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall

survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

Article VI

Retention and Accessibility of Records

6.1 **Records.** Owner shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Owner shall retain such records, and any supporting documentation for the greater of:

- (A) Five (5) years from the end of the Agreement period; or
- (B) The period required by other applicable laws and regulations.

6.2 **Accessibility.** Owner gives 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 and Real Property belonging to or in use by Owner pertaining to the Economic Development Program Grant (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to Owner's books and records will be limited to information needed to verify that Owner 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 City. In no event shall City's access to Owner's Records include any access to any personal and/or medical data of any employees of Owner. Owner shall not be required to disclose to the City any information that by law Owner 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 Owner to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Owner. The rights to access the Records shall terminate five (5) 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 Owner for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Owner 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 Owner 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 Owner as long as the Owner 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 Owner 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.

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.

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 Owner, in performing its obligations thereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties, and Owner agrees to indemnify and hold 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 Owner files for bankruptcy, whether involuntarily or voluntary, Owner 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 Owner:

Oldfield David E & Ilene Evelyn 2009 Revocable Trust
Attn: Mr. David Oldfield
1101 South Broadway Street
Carrollton, Texas 75006

With a copy to:

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 **Compliance.** Under Chapter 2264 of the Texas Local Government Code, Owner has submitted the required certification that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this public subsidy/grant from the City, the Owner, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Owner shall repay the amount of the grant from the City with interest, at the rate of 5% according to the terms provided by this Agreement under Section 2264.053, but not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the Owner of the violation. City may exercise all rights to enforce this recovery as allowed by Subchapter C of Chapter 2264 or any other laws.

8.12 **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

Peter J. Braster, Senior Development Manager

OWNER

Oldfield David E & Ilene Evelyn 2009 Revocable Trust

By: David E Oldfield
Name: DAVID E. OLDFIELD
Title: OWNER

STATE OF TEXAS)
COUNTY OF DALLAS)

BEFORE ME, the undersigned authority, on this day personally appeared DAVID OLDFIELD, of Oldfield David E & Ilene Evelyn 2009 Revocable Trust, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29 day of July, 2015.

(seal) Notary Public

[Signature]

Printed or Typed Name of Notary Public

My commission expires: 05/02/19

RICHARD A. CALVERT

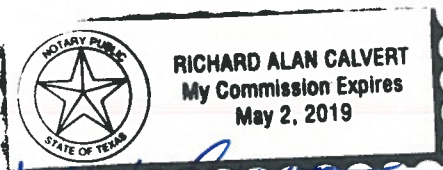


Exhibit "A"

Address: 1017 South Broadway Street

Legal Description: Original Town Carrollton, Block A, with 1/2 of Lot 13.

