

## **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 Joe the Baker, LLC., a Texas limited liability corporation ("Company"), acting by and through its respective authorized officers and representatives.

### **WITNESSETH:**

**WHEREAS**, Company's business is located at 1104 Elm Street in Downtown Carrollton (the "Property"), as generally depicted in the plan, attached hereto and incorporated by reference, as if written word for word herein, in Exhibit "A", as such plans may be further amended and approved pursuant to applicable laws; and.

**WHEREAS**, Company desires to revitalize the existing structure for use as a bakery and to hold instructional baking classes and conduct retail bakery sales; and

**WHEREAS**, Company intends to rehabilitate the existing structure, which is not suitable for Company's proposed commercial activities, in connection with the re-development of the Property; and

**WHEREAS**, Company 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 Company as an economic development incentive to use for rehabilitating the structure 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 Company, 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 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 May 31, 2020 (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 **Development of Property.** On or before June 1, 2015, Company will enter into a lease agreement with a landlord to occupy and operate a bakery on the Property. Subject to extension for Events of Force Majeure, (A) construction on the improvements, as set forth below, will begin no later than June 15, 2015, as evidenced by Company or Lessee obtaining a building permit for the Property, and (B) build out of the Property will be substantially complete by July 15, 2015, as evidenced by a Certificate of Occupancy (or applicable equivalent) for the structure located thereon; provided, however, an extension of this date may be granted based upon market conditions.

3.2 **Performance.**

(A) Company 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 the Company; and

(B) On or before August 1, 2015, Company agrees to be open for the operation of public retail sales each week during the Term of this Agreement: (1) on Fridays and Saturdays from 10 am to 8 pm; and (2) from Sunday to Thursday not less than any combination of thirty (30) hours. The retail hours shall continue through the initial term of the Company’s lease agreement with the landlord.

3.3 **Improvements.** Company 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 bakery, 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.

## **Article IV Economic Development Grant**

### **4.1 Grant.**

(A) The City will reimburse Company for the “Improvement Costs” with the City’s share being an amount not to exceed Fifty Five Thousand Dollars (\$55,000). For the purposes of this Section 4.1(A), Improvement Costs shall include costs related to improvements which are permanent and fixed to the building or Property and are necessary to improve the building for use as a bakery, including, but not limited to, health and safety, utilities, interior finish-out, signage, awning, and façade improvements. Reimbursement for Improvement Costs shall be made no more frequently than two (2) times per month, by the City, each time within fifteen (15) days of the receipt of written invoices or documentation evidencing the total actual costs of the work performed prior to the date of such request, with 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 reimbursements provided for in Subsection (A) above: (i) Building permit and Inspection fees for the improvements and other contractor registration and licensing are included as part of this incentive package; and (ii) In addition, all applicable City health inspection permit fees will be included as part of this incentive package. All applicable 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 Historic 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. For this Property, both sides of Elm Street shall be considered frontage. 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 payment of cash-in-lieu of parking fees shall be included in this incentive package.

### **4.2 Grant Payment Requirements and Schedule.**

(A) Subject to compliance with Article III above, Company may submit itemized documents setting forth the Taxable Value of the improvement(s) and request grant funds in accordance with the terms of Section 4.1. City will reimburse Company 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.** Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of:

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

6.2 **Accessibility.** Company 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 Company 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 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 City. In no event shall City's access to Company's Records include any access to any personal and/or medical data of any employees of Company. Company shall not be required to disclose to the City any information that by law 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 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 Company. 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

Company 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. 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.

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 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 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 Company files for bankruptcy, whether involuntarily or voluntary, 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:

Joe the Baker, LLC  
Attn: Mr. Joe Baker

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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, Company 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 Company, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company 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 Company 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



**COMPANY**

By: Joe the Baker, LLC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

\_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_,  
\_\_\_\_\_ of Joe the Baker, LLC., 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 \_\_\_\_\_ day of  
\_\_\_\_\_, 2015.

(seal) Notary Public

\_\_\_\_\_  
Printed or Typed Name of Notary Public

My commission expires:

Exhibit "A"

Address: 1104 Elm Street, Carrollton, Texas, 75006

Legal Description: Original Town Carrollton, Block N Lot 3

