

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

TAX ABATEMENT AGREEMENT

This Tax Abatement Agreement (the “Agreement”) is entered into by and between the City of Coppell, Texas (“City”), and A Decent Establishment LLC, a Texas limited liability company (“Owner”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

WITNESSETH:

WHEREAS, the City Council of the City of Coppell, Texas, (the “City Council”), passed an Ordinance (the “Ordinance”) establishing Tax Abatement Reinvestment Zone No. 99 (the “Zone”), for commercial/industrial tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the “Tax Code”); and

WHEREAS, the City has adopted guidelines for tax abatement (the “Tax Abatement Guidelines”); and

WHEREAS, the Tax Abatement Guidelines contain appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Tax Code; and

WHEREAS, the City has adopted a resolution stating that it elects to be eligible to participate in tax abatement; and

WHEREAS, in order to maintain and enhance the commercial and industrial economic and employment base of the Coppell area, it is in the best interests of the taxpayers for the City to enter into this Agreement in accordance with said Ordinance, the Tax Abatement Guidelines and the Tax Code; and

WHEREAS, Owner owns or is under contract to purchase the land located at 462 Houston Street, Coppell, Texas, being further described in **Exhibit “A”** (“Land”), and intends to construct or cause to be constructed thereon a building containing approximately 6,000 square feet of space, and other ancillary facilities such as reasonably required parking and landscaping more fully described in the submittals filed by Owner with the City, from time to time, in order to obtain a building permit(s) (hereinafter defined as the “Improvements”); and

WHEREAS, Owner intends to lease the Improvements to Lessee (hereinafter defined) for a period of at least five (5) years (the “Lease”), for the purpose of Lessee operating a Roots Coffeehouse (hereinafter defined); and

WHEREAS, Owner’s development efforts described herein will create permanent new jobs in the City; and

WHEREAS, the City Council finds that the contemplated use of the Premises (hereinafter defined), and the contemplated Improvements are consistent with encouraging development of the Zone in accordance with the purposes for its creation and/or in compliance with the Tax Abatement Guidelines, the Ordinance adopted by the City, the Tax Code and all other applicable laws; and

WHEREAS, the City Council finds that the Improvements sought are feasible and practicable, and would be of benefit to the Premises to be included in the Zone and to the City after expiration of this Agreement; and

WHEREAS, a copy of this Agreement has been furnished, in the manner prescribed by the Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Premises are located; and

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of primary employment, the attraction of major investment in the Zone, which contributes to the economic development of Coppell and the enhancement of the tax base in the City, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of a Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Base Year Taxable Value” shall mean the Taxable Value for the Land for the year in which this Agreement is executed (2015).

“City” shall mean the City of Coppell, Texas, acting by and through its city manager, or designee.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof and permits with respect thereto required by applicable governmental authorities have been obtained for construction of the Improvements; (ii) all necessary permits for the construction of the Improvements on the Land pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Improvements has commenced.

“Completion of Construction” shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued for the Improvements.

“Effective Date” shall mean the last date of execution of this Agreement.

“Expiration Date” shall mean March 1 of the calendar year following the fifth (5th) anniversary date of the First Year of Abatement.

“First Year of Abatement” shall mean the calendar year commencing with January 1 of the calendar year immediately following the date of Completion of Construction of the Improvements.

“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, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Improvements” shall mean a building containing approximately 6,000 square feet of space, and other ancillary facilities such as reasonably required parking and landscaping more fully described in the submittals filed by Owner with the City, from time to time, in order to obtain a building permit(s), provided, however, that “Improvements” shall not include the Land.

“Lease” shall mean the lease of the Improvements for a period of at least five (5) years.

“Lease Inception Date” shall mean the date the term of the Lease commences but not later than October 31, 2016.

“Lessee” shall mean Kaluke LLC (TBD).

“Land” means the real property described in Exhibit “A”.

“Owner” shall mean A Decent Establishment LLC, a Texas limited liability company.

“Premises” shall collectively mean the Improvements and the Land.

“Related Agreement” shall mean any agreement, other than this Agreement, by and between City and Owner, its parent company, and any affiliated or related entity controlled or owned by Owner, or its parent company.

“Required Use” shall mean the continuous occupancy of the Improvements by Lessee and the operation of a Roots Coffeehouse thereat.

“Roots Coffeehouse” shall mean a specialty coffee house.

“Taxable Value” means the appraised value as certified by the Appraisal District as of January 1 of a given year.

Article II General Provisions

2.1 Owner is the owner of the Land, or is under contract to purchase the Land, which Land is located within the city limits of the City and within the Zone. Owner intends to construct, or cause to be constructed, the Improvements on the Land. Owner intends to locate and maintain Tangible Personal Property at the Improvements following the Owner's occupancy thereof. Owner has or intends to enter into the Lease.

2.2 The Premises are not in an improvement project financed by tax increment bonds.

2.3 This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City.

2.4 The Premises are not owned or leased by any member of the Coppell City Council or any member of the Coppell Planning and Zoning Commission, or any member of the governing body of any taxing units joining in or adopting this Agreement.

2.5 Owner shall, before May 1, of each calendar year that the Agreement is in effect, certify in writing to the City that Owner is in compliance with each term of the Agreement.

2.6 The Premises at all times shall be used in the manner (i) that is consistent with the City's Comprehensive Zoning Ordinance, as amended, and (ii) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone.

Article III Tax Abatement Authorized

3.1 This Agreement is authorized by the Tax Code and in accordance with the City Tax Abatement Guidelines, and approved by resolution of the City Council.

3.2 Subject to the terms and conditions of this Agreement, and provided the Taxable Value for the Improvements, excluding the Land, is at least Four Hundred Thousand Dollars (\$400,000.00) as of January 1 of the First Year of Abatement and as of January 1 of each calendar year thereafter during the term of this Agreement, City hereby grants Owner an abatement of seventy-five percent (75%) of the Taxable Value of the Improvements for a period of five (5) consecutive years, beginning with the First Year of Abatement. The foregoing percentage of Taxable Value of the Improvements subject to abatement for each year this Agreement is in effect will apply only to the portion of the Taxable Value of the Improvements that exceeds the Base Year Taxable Value. The failure of the Improvements to have a Taxable Value of at least Four Hundred Thousand Dollars (\$400,000.00) as of January 1 of any calendar year during the term of this Agreement shall not be considered an event of default or breach of this Agreement subject to repayment of the abated taxes as provided in Article V, but rather such event shall result in the forfeiture of the abatement of taxes for the Improvements for such tax year. In the event the Taxable Value of the Improvements, excluding the Land, is less than Four Hundred Thousand

Dollars (\$400,000.00) as of January 1 of a given tax year during the term of this Agreement, the Owner shall forfeit the tax abatement for the Improvements for such tax year. Such failure shall not be considered an event of default or breach subject to termination and recapture as provided in Article V hereof.

3.3 The period of tax abatement herein authorized shall be for a period of five (5) consecutive years beginning the First Year of Abatement.

3.4 During the period of tax abatement herein authorized, Owner shall be subject to all taxation not abated, including but not limited to, sales tax and ad valorem taxation on Land and inventory.

3.5 During the term of this Agreement following the Lease Inception Date and continuing thereafter until the Expiration Date, the Improvements shall not be used for any purpose other than the Required Use and the operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) days except in connection with and to the extent of an event of Force Majeure.

3.6 The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article IV Improvements

4.1 Owner owns or is under contract to purchase the Land and intends to construct or cause to be constructed thereon the Improvements. Nothing in this Agreement shall obligate Owner to construct the Improvements on the Land, or to locate the Tangible Personal Property on the Premises, but said actions are conditions precedent to tax abatement pursuant to this Agreement.

4.2 As a condition precedent to the initiation of the Owner's tax abatement pursuant to this Agreement, Owner agrees, subject to events of Force Majeure, to cause Commencement of Construction of the Improvements to occur on or before March 1, 2016, and subject to events of Force Majeure to cause Completion of Construction of the Improvements to occur on or before October 31, 2017, as good and valuable consideration for this Agreement, and that all construction of the Improvements will be in accordance with all applicable state and local laws, codes, and regulations (or valid waiver thereof).

4.3 Construction plans for the Improvements constructed on the Land will be filed with the City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

4.4 Owner agrees to maintain the Improvements during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.

4.5 The City, its agents and employees shall have the right of access to the Premises during and following construction to inspect the Improvements at reasonable times and with

reasonable notice to Owner, and in accordance with visitor access and security policies of the Owner, in order to insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

Article V
Default: Recapture of Tax Revenue

5.1 In the event the Owner: (i) fails to cause Commencement and/or Completion of Construction of the Improvements in accordance with this Agreement or in accordance with applicable State or local laws, codes or regulations; (ii) has delinquent ad valorem or sales taxes owed to the City (provided Owner retains its right to timely and properly protest such taxes or assessment); (iii) suffers an event of “Bankruptcy or Insolvency”; or (iv) breaches any of the terms and conditions of this Agreement or a Related Agreement, then Owner after the expiration of the notice and cure periods described below, shall be in default of this Agreement. As liquidated damages in the event of such default, the Owner shall, within thirty (30) days after demand, pay to the City all taxes which otherwise would have been paid by the Owner to the City without benefit of a tax abatement, for the property the subject of this Agreement at the statutory rate for delinquent taxes as determined by Section 33.01 of the Tax Code, as amended, but without penalty. The Parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The Parties further agree that any abated tax, including interest, as a result of this Agreement, shall be recoverable against the Owner, its successors and assigns and shall constitute a tax lien against the Premises, and shall become due, owing and shall be paid to the City within thirty (30) days after notice of termination.

5.2 Upon breach by Owner of any of the obligations under this Agreement, the City shall notify Owner in writing, which shall have thirty (30) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within such 30-day period, and Owner has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the City may extend the period in which the default must be cured.

5.3 If Owner fails to cure the default within the time provided as specified above or, as such time period may be extended, the City, at its sole option, shall have the right to terminate this Agreement by providing written notice to Owner.

5.4 Upon termination of this Agreement by City, all tax abated as a result of this Agreement, shall become a debt to the City as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is provided. The City shall have all remedies for the collection of the abated tax provided generally in the Tax Code for the collection of delinquent property tax. The City at its sole discretion has the option to provide a repayment schedule. The computation of the abated tax for the purposes of the Agreement shall be based upon the full Taxable Value of the Improvements without tax abatement for the years in which tax abatement hereunder was received by Owner, as determined by the Appraisal District, multiplied by the tax rate of the years in question, as calculated by the City Tax Assessor-Collector. The liquidated damages shall incur penalties as provided for delinquent taxes and shall commence to accrue after expiration of the thirty (30) day payment period.

**Article VI
Annual Application for Tax Exemption**

It shall be the responsibility of Owner pursuant to the Tax Code, to file an annual exemption application form with the Chief Appraiser for the appraisal district for the Improvements. A copy of the exemption application shall be submitted to the City upon request.

**Article VII
Annual Rendition**

Owner shall annually render the value of the Improvements to the Appraisal District and provide a copy of the same to the City upon written request.

**Article VIII
Miscellaneous**

8.1 Notice. All notices required or permitted to be delivered hereunder shall be deemed received three (3) days after sent by United States Mail, postage prepaid, certified mail, return receipt requested addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

Attn: City Manager
City of Coppell, Texas
P. O. Box 478
Coppell, Texas 75019

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Owner, to:

Attn: Christian P. Hemberger
Manager
A Decent Establishment LLC
P.O. Box #2356
Coppell, Texas 75019

8.2 Authorization. This Agreement was authorized by resolution of the City Council.

8.3 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

8.4 Governing Law. This Agreement governed by the laws of the State of Texas. Venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

8.6 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

8.7 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

8.8 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

8.9 Employment of Undocumented Workers. During the term of this Agreement Owner agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), such Owner shall repay the amount of the abated taxes pursuant to this Agreement as of the date of such violation within one hundred twenty (120) days after the date such Owner is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Owner is not liable for a violation of this section by a subsidiary, affiliate, tenant or franchisee of the Owner or by a person with whom such Owner contracts.

8.10 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.

8.11 Successor and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. This Agreement may not be assigned without the prior written consent of the City Manager.

8.12 Right of Offset. The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from the Owner, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court.

8.13 Condition Precedent. This Agreement is subject to and conditioned upon the Owner closing its purchase of the Land on or before January 15, 2016.

[Signature Page to Follow]

EXECUTED in duplicate originals the ____ day of _____, 2015.

CITY OF COPPELL, TEXAS

By: _____
Karen Selbo Hunt, Mayor

Attest:

By: _____
Christel Pettinos, City Secretary

Approved as to Form:

By: _____
City Attorney

EXECUTED in duplicate originals the ____ day of _____, 2015.

A DECENT ESTABLISHMENT LLC

By: _____
Christian P. Hemberger, Manager

Exhibit "A"
(Legal Description of Land)

Old Town Addition, Lots 1R and 2R, Block C (0.237 acres)