

**STATE OF TEXAS           §                           INFRASTRUCTURE DEVELOPMENT**  
**§                           AGREEMENT BY AND BETWEEN CITY OF COPPELL,**  
**§                           TEXAS AND LEE PROPERTIES, INC. EMPLOYEE**  
**COUNTY OF DALLAS    §                           PROFIT SHARING PLAN.**

This Infrastructure Development Agreement (“Agreement”) is made by and among the City of Coppell, Texas (the “City”), Lee Properties, Inc. Employee Profit Sharing Plan (the “Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

**W I T N E S S E T H:**

**WHEREAS**, the Company is the owner of approximately 0.89 acres of land (“Land”) and improvements (“Improvements”) located at 201 N. Denton Tap Road, Coppell, Texas (collectively the “Property”); and

**WHEREAS**, the Company intends to renovate the Improvements consisting of approximately 1600 square feet of building and parking space on 0.89 acres of land for the operation of a restaurant known as Sonic Drive-In (hereinafter defined as the “Restaurant”); and

**WHEREAS**, the City desires to encourage business expansions within the City that will increase property tax base and generate additional sales tax and other revenue for the City; and

**WHEREAS**, the promoting of the expansion of existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

**WHEREAS**, the development and maintenance of the roadway and traffic management are governmental functions; and

**WHEREAS**, the Company desires to contribute to the City’s roadway improvements; and

**WHEREAS**, the City has determined that making and entering into this Agreement will (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in the City.

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, 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 Company’s existence, insolvency, employment of receiver for any part of Company’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 proceedings under any bankruptcy or insolvency laws by or against Company and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“City” shall mean the City of Coppell, Texas.

“Commencement Date” shall mean Completion of Construction of the Infrastructure.

“Commencement of Construction shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Project and/or Infrastructure, as the case may be; (ii) all necessary permits for the construction of the Project and/or Infrastructure, as the case may be, have been issued by the applicable governmental authorities; and (iii) construction of the Project and/or the Infrastructure, as applicable, has commenced.

“Company” shall mean Lee Properties, Inc. Employee Profit Sharing Plan.

“Completion of Construction” shall mean that final inspection has been conducted and acceptance has been issued by the City for the Infrastructure.

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

“Expiration Date” shall mean the date the Parties have fully satisfied their respective obligations hereunder.

“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 acts of omissions of the Party), fires, explosions or floods, strikes, slowdowns or work stoppages, but may not impact any payments to be made hereunder.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental

authority on Company with respect to the Infrastructure or any property or any business owned by Company within the City.

“Infrastructure” shall mean construction of a roadway lane on the North portion of Town Center Boulevard, at the intersection with Denton Tap Road westward for 250 feet.

“Infrastructure Grant” shall mean a grant of funds to offset costs and expenses incurred by Company for the acquisition of the right-of-way and the construction of Infrastructure, in an amount not to exceed \$75,000.00, to be paid as set forth herein.

“Payment Request” shall mean a written request from Company to City for payment of the monthly installment of the Infrastructure Grant accompanied by the applicable copies of invoices, bills, receipts and such other information, as may reasonably be requested by the City, reflecting the actual costs incurred and paid by the Company for the construction of the Infrastructure for the preceding ending calendar month.

“Property” shall mean that real property located at 201 N. Denton Tap Road, Coppell, Texas, described as Lot 1R Block A, Sonic addition, an addition to the City of Coppell, Dallas County Texas.

“Right of Way” shall mean the six (6) feet of right of way being dedicated to the City by the Company pursuant to Section 4.4 hereof.

## **Article II Term**

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

## **Article III Economic Development Grant**

3.1 Infrastructure Grant. Subject to the obligation of the Company to repay the Infrastructure Grant pursuant to Section 5.2 hereof and the continued satisfaction of all the terms and conditions of this Agreement by the Company, the City agrees to provide the Company with the Infrastructure Grant to be paid as set forth herein.

3.2 The Infrastructure Grant made hereunder shall be provided solely from lawful available funds. The City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. Nothing in this Agreement shall obligate or create any duty on the City to budget appropriate or obligation to fund any future obligation. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution without the prior written consent of the City.

**Article IV**  
**Conditions to Economic Development Grant**

The obligation of the City to provide the Infrastructure Grant shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the following conditions.

4.1 Payment Request. Company shall, as a condition precedent to the payment of the applicable Infrastructure Grant, provide the City with a Payment Request and dedicate the Right of Way easement as set forth in Exhibit A.

4.2 Company Obligation. Company shall, prior to the Payment Request for the Grant, complete construction of the Infrastructure, as depicted and set forth in Exhibit B which is attached hereto and incorporated by reference.

4.3 Good Standing. Company shall not have an uncured breach or default of this Agreement.

4.4 Project. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Project and the Infrastructure to occur on or before August 15, 2016; and shall, subject to events of Force Majeure, cause Completion of Construction of the Project and the Infrastructure to occur on or before forty-five (45) days following Commencement of Construction. Simultaneous with the execution hereof, Company shall dedicate by final plat the six foot (6') Right of Way. The Company shall construct the infrastructure lane roadway thereon, in accordance with City standards and applicable maintenance bond.

**Article V**  
**Termination; Repayment**

5.1 Termination. This Agreement shall terminate upon any one of the following:

- (a) by mutual written agreement of the Parties;
- (b) on the Expiration Date;
- (c) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement, and such default or breach is not cured within thirty (30) days after written notice thereof;
- (d) upon written notice by City, if Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however Company retains the right to timely and properly protest and contest any such Impositions); or
- (f) upon written notice by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2. Repayment. In the event the Agreement is terminated by the City pursuant to Section 5.1(c), (d), (e), or (f), the Company shall immediately repay to the City an amount equal to the Infrastructure Grant provided by the City to Company immediately preceding the date of such termination, plus interest at the rate of interest periodically announced by the *Wall Street Journal* as the prime or base commercial lending rate, or if the *Wall Street Journal* shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate, from the date on which the Infrastructure Grant is paid by the City until such Infrastructure Grant is repaid by the Company. The repayment obligation of Company set forth in this section 5.2 hereof shall survive termination.

5.3 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 Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, or otherwise, and regardless of whether or not the debt due the City has been reduced to judgment by a court.

## **Article VI Miscellaneous**

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto.

6.2 Limitation on Liability. It is understood and agreed between the Parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of the Company's performance of the conditions under this Agreement.

6.3 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.

6.4 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 on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

Attn: Clay Phillips  
City Manager  
City of Coppell, Texas  
255 Parkway  
Coppell, Texas 75019

With a copy to:

Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 N. Akard  
Dallas, Texas 75201

If intended for Company, to:

Attn: Ralph L. Mason  
P.O. Box 22775  
Oklahoma City, OK 73123-1775

With a copy to:

Attn: Reeder E. Ratliff  
P.O. Box 22775  
Oklahoma City, OK 73123-1775

6.5 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.

6.6 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.

6.7 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive 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.

6.8 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.

6.9 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.

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

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

6.12 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.13 Legal Construction. 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.

6.14 Assignment. This Agreement may not be assigned by the Company without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

6.15 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.

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF COPPELL, TEXAS**

By: \_\_\_\_\_  
Clay Phillips, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Christel Pettinos, City Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Robert E. Hager, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**LEE PROPERTIES, INC. EMPLOYEE PROFIT SHARING PLAN**

\_\_\_\_\_  
By: Ralph L. Mason, Trustee







