

STATE OF TEXAS                   §  
   §                   ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
COUNTY OF DALLAS           §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Coppell, Texas (“City”), and Coppell Deli Grocery Inc., a Texas corporation (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

**WITNESSETH:**

**WHEREAS**, Company owns the real property located at 449 W. Bethel, Coppell, Texas, being further described in Exhibit “A” (“Land”), and currently operates a restaurant located thereon known as the Coppell Deli (hereinafter defined as the “Coppell Deli”), and intends to build a new restaurant building containing approximately 2,300 square feet of restaurant/market space adjacent to the existing restaurant building (hereinafter defined as the “Improvements”); and

**WHEREAS**, Company has advised City that a contributing factor that would induce Company to construct the Improvements would be an agreement by City to provide an economic development grant to Company to defray a portion of the costs of construction thereof; and

**WHEREAS**, promoting the location of new business enterprises within City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of City; and

**WHEREAS**, City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with those programs; and

**WHEREAS**, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

**WHEREAS**, City has determined that making an economic development grant to Company in accordance with City’s economic development program will (i) further the economic development objectives of City; (ii) benefit City and City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in City; and

**WHEREAS**, City Council does hereby approve this Agreement as a program for making an economic development grant to Company for the purpose of stimulating and maintaining its commercial activity within City, and to promote the generation of sales tax, the enhancement of the property tax base, and to maintain and increase the economic vitality of 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, Dallas County, Texas.

“Commencement Date” shall mean the date a final certificate of occupancy has been issued by City for Company’s occupancy of the Improvements.

“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.

“Company” shall mean Coppell Deli Grocery Inc., a Texas corporation.

“Completion of Construction” shall mean: (i) substantial completion of the Improvements; and (ii) the date City has conducted a final inspection of the Improvements.

“Coppell Deli” shall mean Company’s current restaurant location of 449 W. Bethel Road, Coppell, Texas.

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

“Expiration Date” shall mean the fifth (5th) anniversary date of the Commencement Date.

“Fee Waiver” shall mean the waiver of permit and development fees for the construction of the Improvements including building permit and inspection fees, zoning application fees, platting fees, roadway impact roadway impact fees, assessed against the Land, if any, (not including water and waste water impact fees).

“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, terrorist act, or threat thereof, 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.

“Grant” shall mean an economic development grant in an amount equal to the actual costs incurred and paid by the Company for the Improvements, not to exceed One Hundred Twenty-Five Thousand Dollars (\$125,000.00), to be paid in installments as set forth herein.

“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 Improvements or any property or any business owned by Company within City.

“Improvements” shall mean a new restaurant building containing approximately 2,300 square feet of restaurant/market space, and other ancillary facilities such as reasonably required parking and landscaping more fully described in the submittals filed by Company with City, from time to time, in order to obtain a building permit(s), provided, however, that “Improvements” shall not include the Land.

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

“Payment Request” shall mean a written request from Company to City for payment of the Grant accompanied by invoices, receipts and other evidence of the costs incurred and paid by the Company for the Improvements and such other information, as may be reasonably be requested by City.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between City and the Company, or any of its affiliated or related entities.

## **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 Subject to the obligation of the Company to repay the Grant pursuant to Section 5.2 hereof and the continued satisfaction of all the terms and conditions of this Agreement by the Company, City agrees to provide the Company with the Grant in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) to be paid in four equal installments of Thirty-One Thousand Two Hundred Fifty Dollars (\$31,250.00) each. Each installment of the Grant shall be paid by City on behalf of Company directly to Legacy Bank or other entity designated in writing by Company. The first installment of the Grant is to be paid within thirty (30) days after receipt of a Payment Request following commencement of the grading of the Land for the construction of the Improvements; the second installment of the Grant is to be paid within thirty (30) days after receipt of a Payment Request following completion of the foundation for the Improvements; the third installment of the Grant is to be paid within thirty (30) days after receipt of a Payment Request following completion of the framing of Improvements; and the fourth and final installment of the Grant is to be paid within thirty (30) days after receipt of a Payment Request following the date City issues a certificate of occupancy for the Improvements for the Coppel Deli.

3.2 The Grant made hereunder shall be provided solely from lawful available funds. City shall have no obligation or liability to pay any portion of the Grant unless City appropriates funds to make such payment during the budget year in which the payment of the Grant is due. City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of the obligations of 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 City.

3.4 Fee Waiver. Subject to the obligation of the Company to repay the Grant pursuant to Article V hereof, and the continued satisfaction of all the terms and conditions of this Agreement, City agrees to provide the Fee Waiver to Company.

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

The obligation of City to pay the 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 each installment of the Grant, provide City with the applicable Payment Request.

4.2 Good Standing. Company shall not have an uncured breach or default of this Agreement, or a Related Agreement.

4.3 Construction of the Improvements. Company shall, subject to events of Force Majeure, cause the Commencement of Construction of the Improvements to occur on or before December 31, 2015, and, subject to events of Force Majeure, cause Completion of Construction of the Improvements to occur on or before August 15, 2016.

4.4 Required Use. Beginning on the Commencement Date and continuing until the Expiration Date the Improvements shall be continuously used and operated as a restaurant doing business as the Coppell Deli open to the public.

## **Article V**

### **Termination; Repayment**

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

- (a) by mutual written agreement of the Parties;
- (b) on 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, or a Related Agreement, and such default or breach is not cured within thirty (30) days after written notice thereof;
- (d) upon written notice by City, if any Impositions owed to 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 taxes or Impositions);
- (e) upon written notice by City, if Company suffers an event of Bankruptcy or Insolvency; and
- (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 City pursuant to Section 5.1(b), (c), (d), (e), or (f), the Company shall immediately refund to City an amount equal to the Grant and the Fee Waiver provided by City to the Company as of the date of 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 City) as its prime or base commercial lending rate, from the date on which each respective Grant is paid

by City until each such Grant is repaid by the Company. The repayment obligation of Company set forth in this section 5.2 hereof shall survive termination.

5.3 Offsets. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from the Company, 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 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 City assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless 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: City Manager  
City of Coppell, Texas  
255 Parkway Boulevard  
P.O. Box 9478  
Coppell, Texas 75019-9478

With a copy to:

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

If intended for Company, to:

Attn: Jalal ("Jay") Khorrami, Owner  
Coppell Deli Grocery Inc.  
449 W. Bethel Road  
Coppell, Texas 75019

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. The City Manager is authorized on behalf of City to execute any amendments to this Agreement.

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 shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. 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 Employment of Undocumented Workers. During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the Grant and the Fee Waiver, and any other funds received by the Company from City as of the date of such violation within one hundred twenty (120) days after the date the Company 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.

*(Signature page to follow)*



**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF COPPELL, TEXAS**

By: \_\_\_\_\_  
Karen Hunt, Mayor

**Attest:**

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

**Agreed as to Form:**

By: \_\_\_\_\_  
City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**COPPELL DELI GROCERY INC.**

By: \_\_\_\_\_  
Jalal ("Jay") Khorrami, Owner

## **EXHIBIT “A”**

### **Legal Description of Land**

**Old Town Coppell Deli, Lot 1, Block A (0.218 acres).**