

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

This Economic Development Incentive Agreement (“Agreement”) is made by and between the Hutchins Economic Development Corporation, a Type B Sales Tax Corporation (“HEDC”), and EFJ LLC, a Texas limited liability company, doing business as Pete’s Café (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company has leased or intends to lease approximately 2,600 square feet of space located at the Hutchins Plaza Shopping Center located at 101 South Interstate 45, Suite 1, Hutchins, Texas 75141 (the Improvements”), for a period of at least three (3) years (the “Lease”); and

WHEREAS, Company intends to operate Pete’s Café at the Improvements (the “Restaurant”); and

WHEREAS, Company has advised HEDC that a contributing factor that would induce Company to operate the Restaurant at the Improvements would be an agreement by HEDC to provide the Infrastructure Grant (hereinafter defined) to Company to defray a portion of the costs associated with the Infrastructure (hereinafter defined); and

WHEREAS, HEDC has adopted programs for promoting economic development; and

WHEREAS, the Development Corporation Act, Chapters 501- 505 of the Texas Local Government Code, as amended (the “Act”) authorizes HEDC to provide economic development grants for the creation and retention of primary jobs that are required for the development of manufacturing and industrial facilities and for infrastructure suitable for new or expanded industrial business enterprises; and

WHEREAS, HEDC has determined that the Infrastructure Grant (hereinafter defined) to be made hereunder is required or suitable to promote or develop manufacturing and industrial facilities, new or expanded business enterprises and constitutes a “project”, as that term is defined in the Act; and

WHEREAS, HEDC has determined that making the Infrastructure Grant to Company in accordance with this Agreement will further the objectives of HEDC, will benefit City and City’s inhabitants and will promote local economic development and stimulate business and commercial activity in City.

NOW THEREFORE, in consideration of the foregoing and other 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 Hutchins, Texas.

“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 Infrastructure; (ii) all necessary permits for the construction of the Infrastructure pursuant to the plans therefore have been issued by all the applicable governmental authorities; and (iii) construction of the Infrastructure has commenced.

“Commencement Date” shall mean the date the certificate of occupancy is issued by the City for the Company’s occupancy of the Improvements following the date of Completion of Construction of the Infrastructure.

“Company” shall mean EFJ LLC, a Texas limited liability company, doing business as Pete’s Café..

“Completion of Construction” shall mean that: (i) substantial completion of the Infrastructure has occurred; and (ii) the City has verified completion of the Infrastructure and issued a certificate of occupancy for Company to occupy the Improvements.

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

“Expiration Date” shall mean the third (3rd) anniversary date of the date of Commencement Date.

“Force Majeure” shall mean an occurrence of any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto governmental action, restrictions or interferences (unless caused by the intentional acts or omissions of the Party), fires, explosions, floods or other inclement weather, strikes, slowdowns or work stoppages, incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or similar causes affecting the area in which the Improvements is located that results in a reduction of labor force or work stoppage in order to comply with

local, state, or national disaster orders, construction delays, shortages or unavailability of supplies, materials or labor, necessary condemnation proceedings, or any other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, in which case the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than fifteen (15) business days after the last day of the month of the occurrence of the event(s) or condition(s) causing the delay or the date the Party whose performance has been delayed becomes aware or should have reasonably known of the event, describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred.

“HEDC” shall mean the Hutchins Economic Development Corporation.

“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 the City.

“Improvements” or “Leased Premises” shall mean approximately 2,600 square feet of space at the Hutchins Plaza Shopping Center located at 101 South Interstate 45, Suite 1, Hutchins, Texas 75141.

“Infrastructure” shall mean a Vent Hood, air exchange system and grease trap to be installed at the Improvements by Company in accordance with plans approved by the City.

“Infrastructure Grant” shall mean an economic development grant to offset the costs of installation of the Infrastructure in an amount not to exceed Twenty-Two Thousand Five Hundred and No/100 Dollars (\$22,500.00), to be paid as set forth herein.

“Lease” shall have the meaning assigned in the Recitals

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

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

“Required Use” shall mean the continuous occupancy and use of the Improvements for the Restaurant open to the public and serving the citizens of the City.

“Restaurant” shall have the meaning assigned in the Recitals.

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 Infrastructure Grant

3.1 Infrastructure Grant. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Infrastructure Grant pursuant to Section 5.2 hereof, HEDC agrees to provide the Infrastructure Grant to Company within thirty (30) days after HEDC receipt of a Payment Request from Company following the Commencement Date, provided Company has caused Completion of Construction of the Infrastructure. Company may submit the Payment Request to HEDC not earlier than thirty (30) days after the Commencement Date and no later than ninety (90) days thereafter. Failure of Company to timely submit the Payment Request for the Infrastructure Grant shall result in forfeiture of the payment of the Infrastructure Grant by HEDC to Company.

3.2 Current Revenue. The Infrastructure Grant made hereunder shall be paid solely from lawfully available funds that have been appropriated by HEDC; provided, however, HEDC agrees during the term of this Agreement to make a good faith effort to appropriate funds to pay the Infrastructure Grant. Consequently, notwithstanding any other provision of this Agreement, HEDC shall have no obligation or liability to pay Infrastructure Grant except as allowed by law.

3.3 Grant Limitations. Under no circumstances shall the obligations of HEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, HEDC 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 HEDC under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Article IV Conditions to Economic Development Grant

The obligation of HEDC 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; provided, however, that failure to meet a condition shall not prevent the payment of the Infrastructure Grant prior to the specified deadline for satisfaction of the condition.

4.1 Payment Request. Company shall, as a condition precedent to the payment of the Infrastructure Grant, timely provide HEDC with the Payment Request.

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

4.3 Required Use. During the term of this Agreement following the Effective 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.

4.4 Completion of Construction. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Infrastructure to occur on or before May 1, 2024, and subject to events of Force Majeure, cause Completion of Construction thereof to occur on or before December 31, 2024.

4.5 Continuous Occupancy. Company shall, beginning on the Commencement Date and continuing thereafter until the Expiration Date, continuously lease and occupy the Improvements, and operate the Restaurant.

4.6 Infrastructure to Remain. The Infrastructure following the Completion of Construction of the Infrastructure shall not be removed from the Improvements.

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) Upon the Expiration Date;
- (c) Upon the date set forth in 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 the date set forth in written notice by HEDC, if Company suffers an event of Bankruptcy or Insolvency;
- (e) Upon the date set forth in written notice by HEDC, if any Impositions owed to the HEDC 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 the date set forth in 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 HEDC pursuant to Section 5.1(c), (d), (e), or (f), Company shall immediately repay to HEDC an amount equal to the Infrastructure Grant previously paid by HEDC 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 HEDC) as its prime or base commercial lending rate, from the date on which the Infrastructure Grant is paid by HEDC until such Infrastructure Grant is refunded by Company. The repayment obligation of Company set forth in this section 6.2 hereof shall survive termination.

5.3 Right of Offset. HEDC may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to HEDC from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether the debt due HEDC 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 Company and HEDC, in satisfying the conditions of this Agreement, have acted independently, and HEDC assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless HEDC 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 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 HEDC, to:

Attn: Guy D. Brown
Executive Director
Hutchins Economic Development
Corporation
103 W. Palestine Street
P.O. Box 361
Hutchins, Texas 75141

With a copy to:

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

If intended for Company, to:

Before Lease Signing:

Attn: Estela Hernandez, Owner
EFJ LLC, dba Pete's Café
3410 Beltline Road
Farmers Branch, Texas 75234

After Lease Signing:

Attn: Estela Hernandez, Owner
EFJ LLC, dba Pete's Café
101 South Interstate 45, Suite 1
Hutchins, Texas 75141

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 Recitals to this Agreement are hereby incorporated herein.

6.11 Exhibits. Any exhibits to this Agreement are incorporated herein.

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 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 Company without the prior written consent of the HEDC.

6.15 Employment of Undocumented Workers. During the term of this Agreement Company agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the Infrastructure Grant herein and any other funds received by Company from HEDC as of the date of such violation within thirty (30) days after the date Company is notified by HEDC of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts.

6.14 Conditions Precedent. This Agreement is subject to, and the obligations of the Parties are expressly conditioned upon Company having entered into the Lease within ninety (90) days after the Effective Date.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2024.

HUTCHINS ECONOMIC DEVELOPMENT CORPORATION

By: _____
Guy D. Brown, Executive Director

EXECUTED on this _____ day of _____, 2024.

EFJ LLC, dba PETE'S CAFÉ

By: _____
Estela Hernandez, Owner