

**ECONOMIC INCENTIVES AGREEMENT BETWEEN
CITY OF MISSION,
MISSION ECONOMIC DEVELOPMENT CORPORATION
AND OLIVE GARDEN HOLDINGS, LLC**

This Economic Incentives Agreement (“Agreement”) by and between the **CITY OF MISSION**, a home-rule Texas municipal corporation (the “**CITY**”), **MISSION ECONOMIC DEVELOPMENT CORPORATION**, a Texas 4B economic development corporation (the “**MEDC**”), and **OLIVE GARDEN HOLDINGS, LLC**, a Florida limited liability company with a principal place of business located at 1000 Darden Center Drive, Orlando, Florida, doing business in Texas (hereinafter “**COMPANY**”) (collectively, hereinafter, the “**Parties**”), is effective as of the date of the last of the signatures herein (“**Effective Date**”).

WHEREAS, the **COMPANY** proposes to construct a \$4.9 million, 7,800 square-foot Olive Garden Italian Restaurant (the “**Restaurant**”) in Mission, Texas, on approximately 1.76 acres at New Quest Mission Gateway Lot 3, which is located at the Northeast corner of East Expressway 83 and South Bryan Road (the “**Project**”); and

WHEREAS, the Mission City Council and MEDC Board of Directors recognize the positive benefits which accrue to the **CITY** and **MEDC** through **COMPANY**’s efforts to cause development of land that is located in the City of Mission, Hidalgo County, Texas; and

WHEREAS, the **CITY** and **MEDC** have adopted programs for promoting economic development; and

WHEREAS, the consideration and benefits to the **CITY** and **MEDC** resulting from **COMPANY**’s proposed development of real property will benefit the **CITY** and **MEDC**, and the **CITY** and **MEDC** believe that the proposed development will contribute and promote state and local economic development by stimulating business and commercial activity within Mission, Texas, by increasing ad valorem taxes, increasing sales and use taxes, and increasing employment; and

WHEREAS, Article III, Section 52(a) of the Texas Constitution provides that the Texas legislature may provide for the creation of programs and the making of loans and grants of public

money, other than money otherwise dedicated by the Constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state; and

WHEREAS, the **CITY** and **MEDC** have determined that finalizing an economic incentive agreement with **COMPANY** in accordance with the terms included herein below will further the objectives of the **CITY** and **MEDC**, will create employment opportunities in the City, will benefit the **CITY** and **MEDC** by creating additional sales and ad valorem taxes, will benefit Mission residents, and will otherwise promote local economic development and stimulate business and commercial activity in the City of Mission.

NOW THEREFORE, in accordance with the foregoing, and in consideration of the mutual promises and covenants contained herein, and in order to obtain the mutual benefits provided hereunder, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

New Local Full-Time Equivalent Jobs. The term "New Local Full-Time Equivalent Jobs" shall mean a full-time (at least 35 hours per week) job (part-time positions may be combined), employed by **COMPANY** at the Restaurant, with an average wage of \$17.00 per hour, which job is dependent on the location of the Restaurant in Mission, Texas. All New Local Full-Time Equivalent Jobs shall be maintained during the Term of this Agreement.

Restaurant. The Term "Restaurant" shall have the meaning assigned in the Recitals.

Sales Tax Annual Payment. The words "Sales Tax" mean amount received from the State Comptroller's Office of a (i) one and one half percent (1.5%) municipal sales tax remitted to the **CITY** and (ii) a one half percent (.50) sales tax remitted to the **MEDC** on the sale of taxable items consummated at the Restaurant, to be used only as a measurement for computation of the grant to be paid to **COMPANY** as an economic incentive as further described below.

Sales Tax Receipts. The words "Sales Tax Receipts" mean receipts of Sales Tax revenue remitted from the State Comptroller based upon the **COMPANY**'s collection of Sales Tax during the Term of this Agreement, which are generated by and solely attributable to the **COMPANY**'s sale of Taxable Items consummated at the Restaurant.

State Comptroller. The words "State Comptroller" mean the office of the Texas Comptroller of Public Accounts.

ARTICLE 2 TERM

The term of this Agreement shall begin on the date that **COMPANY** receives its certificate of occupancy for the Project from the **CITY** and is open for business to the general public (the "Commencement Date") and shall continue until a period of five (5) years after the Commencement Date.

ARTICLE 3 JOB CREATION AND OTHER COMMITMENTS GUARANTEED BY COMPANY

COMPANY agrees to the following commitments and conditions precedent set forth in exchange for the economic incentives provided by the **CITY** and **MEDC**:

- A. **COMPANY** agrees to build the Restaurant on the Property and to create at least 50 "New Local Full-Time Equivalent Jobs" during the Term of this Agreement.
- B. **COMPANY** shall complete construction of the Restaurant not later than February 28, 2025. Any delays shall be communicated in writing to **CITY** and **MEDC**. Any reasonable requests by **COMPANY** for an extension of such completion deadline will not be withheld when such the cause of such delay is through no fault of the **COMPANY**.
- C. Within 180 days after the opening of the Restaurant to the public, and for the duration of this Agreement, **COMPANY** commits to donating food through Darden's Harvest program with a minimum annual value of \$5,000.00 to benefit the City of Mission as agreed by the **COMPANY**, Mission City Council and MEDC Board of Directors, during the Term of this Agreement, so long as Darden's Harvest program remains in place and a suitable recipient agency is available.
- D. **COMPANY** agrees to encourage the Restaurant's General Manager to secure and maintain a Membership with the Mission Chamber of Commerce during the Term of this Agreement.

ARTICLE 4
ECONOMIC INCENTIVES AND OTHER SERVICES
PROVIDED BY CITY AND MEDC

4.1 (a) The **CITY** and **MEDC** shall pay to **COMPANY** the “Sales Tax Annual Payment”, as further described in Article 1, as the Economic Incentives in exchange for the **COMPANY**’s cost of construction of the Restaurant, the creation of at least 50 New Local Full-Time Equivalent Jobs, and other commitments guaranteed by **COMPANY**. Such Sales Tax Annual Payment shall be made on an annual basis but shall not exceed the aggregate amount of \$500,000.00 during the Term of this Agreement.

(b) The Sales Tax Annual Payment will be rebated at a participation rate of:

(i) 100 percent (100%) local sales tax rebate for Years 1, 2 and 3; and

(ii) 50 percent (50%) local sales tax rebate for Years 4 and 5.

(c) In no event shall the **CITY** and **MEDC** be required to pay **COMPANY** a Sales Tax Annual Payment beyond the Term of this Agreement.

4.2 **Clarification on Economic Incentives.** **COMPANY** will only be entitled to claim incentives for the cost of construction of the Restaurant, as described herein, the creation of New Local Full-Time Equivalent Jobs by **COMPANY** at the Restaurant, and other commitments guaranteed by **COMPANY**.

4.3 **Acknowledgement.** **COMPANY** agrees that the incentives being provided to **COMPANY** by the **CITY** and **MEDC** are economic incentives for the construction of the Restaurant, as described herein, creation of New Local Full-Time Equivalent Jobs by **COMPANY** at the Restaurant, and other commitments guaranteed by **COMPANY**. **COMPANY** further acknowledges that the benefits to the **CITY** and **MEDC** will be lost if **COMPANY** terminates its operations in Mission, Texas, prematurely without satisfying the job creation and other requirements set forth in this Agreement and no further Sales Tax Annual Payments will be made to **COMPANY**.

4.4 **Reporting Requirements.** **COMPANY** shall provide an annual performance compliance report to the **CITY** and **MEDC**. The reports shall provide all information requested by the **CITY** and **MEDC** to verify compliance with the terms of this Agreement, including, but not limited to, an attestation of employment by a representative of the **COMPANY**, as applicable.

4.5 **Claw Back.** COMPANY stipulates that the Economic Incentives and other services provided by the CITY and MEDC under this Agreement are conditional upon COMPANY's compliance with commitments guaranteed by COMPANY in Article 3. In the event of default by COMPANY of any of the terms of this Agreement, the CITY and/or MEDC shall provide notice of default to COMPANY. COMPANY shall have thirty (30) days from the date of written notice to remedy such default. Should COMPANY fail to remedy the default(s) within the 30-day remedial period provide herein, CITY and MEDC shall have the right, as its sole and exclusive remedy, to (a) terminate this Agreement by written notice to the COMPANY and (b) withhold amounts owed, which have accrued prior to the termination of this Agreement.

4.6 **Other Services Provided by CITY and MEDC.** The CITY and MEDC shall coordinate with COMPANY to arrange a ground-breaking ceremony for the Restaurant, and/or ribbon cutting event when the restaurant opens to the public.

ARTICLE 5 DEFAULT AND TERMINATION

5.1 **Notice and Opportunity to Cure.** Unless otherwise stated in this Agreement, a default occurs when a party fails to perform any of its obligations hereunder. The non-defaulting party shall give the defaulting party written notice of the default with a thirty (30) day opportunity to cure. If the defaulting party fails to cure the default within the thirty (30) day opportunity to cure period, then the non-defaulting party may terminate this Agreement.

5.2 **Limitation on Remedies.** In the event of a termination of this Agreement prior to the expiration, the sole and exclusive remedy (a) for the CITY and MEDC, in the event of a termination resulting from a breach by or failure on the part of COMPANY, shall be such termination and (b) for COMPANY, in the event of a termination resulting from a breach by or failure on the part of the CITY and/or MEDC, shall be actual monetary damages, together with reasonable attorney's fees and, if applicable, court costs.

ARTICLE 6 CHOICE OF LAW, JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and as per the agreement of the parties, mandatory venue shall lie in the courts of Hidalgo County, Texas.

ARTICLE 7 NOTICES

Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, e-mail or other commercially reasonable means and will be effective when actually received, provided that (a) any notice received on a Saturday, Sunday or holiday will be deemed to have been received on the next day that is not a Saturday, Sunday or holiday, and (b) any notices received after 5:00 P.M. local time at the place of delivery on a day that is not a Saturday, Sunday or holiday will be deemed to have been received on the next day that is not a Saturday, Sunday or holiday. Any address for notice purposes herein may be changed by the parties not less than ten (10) days prior to any written notice delivered as provided herein.

To COMPANY:

Marty Wilson,
Manager, Development Incentives and Property Tax
Darden Restaurants, Inc.
1000 Darden Center Drive
Orlando, Florida 32837
mbwilson@darden.com

To MEDC:

Tecló J. Garcia
Chief Executive Officer
Mission Economic Development Corporation
801 N. Bryan Road,
Mission, Texas 78572
tgarcia@missionedc.com

Copy To:

Eugene R. Vaughan, III
Jones, Galligan, Key & Lozano, L.L.P.

P.O. Drawer 1247
Weslaco, Texas 78599-1247
evaughan@jgkl.com

To CITY:

Randy Perez
City Manager
City of Mission
1201 East 8th Street,
Mission, Texas 78572
rperez@missiontexas.us

Copy To:

Victor A. Flores
City Attorney
City of Mission
1201 East 8th Street,
Mission, Texas 78572
vaflores@missiontexas.us

**ARTICLE 8
ASSIGNMENT**

Prohibition of Assignment. COMPANY may not assign this Agreement or any of COMPANY's rights under it without prior written consent from the CITY and MEDC. Any attempted assignment without the written consent of the CITY and MEDC is void. The consent by the CITY and MEDC to any assignment by COMPANY will not release COMPANY of its obligations under this Agreement, and COMPANY and the assignee will be jointly and severally liable for the performance of those obligations after any such assignment.

**ARTICLE 9
MISCELLANEOUS PROVISIONS**

9.1 **Relationship of the Parties.** This contract is to promote job creation and other economic incentives and does not establish a joint venture, principal agent or employer-employee relationship between the parties.

9.2 **Compliance with Laws.** COMPANY shall comply with all laws, ordinances, rules and regulations (including, without limitation, all labor laws) that are applicable to its activities and operations in Mission, Texas.

9.3 **Force Majeure.** The time which any party to this Agreement shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed by condemnation, casualty, damage, strikes or lockouts, acts of God, Governmental restrictions, failure or inability to secure materials or labor, reasons of priority or similar regulations or order of any governmental or regulator body, enemy action, terrorism, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the party seeking the delay.

9.4 **Successors and Assigns.** Subject to the provisions in Article 8, the provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Except as expressly provided herein, this Agreement may not be assigned without the prior written consent of the other party.

9.5 **Entire Agreement.** This Agreement shall constitute the full and entire understanding and agreement between the parties with regard to the subject matter hereof. This Agreement may not be altered, modified or amended except by a writing executed by both parties hereto.

9.6 **Severability.** A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision.

9.7 **Contract Interpretation.** Although this Agreement is drafted by the **CITY**, should any part be in dispute, the **CITY**, **MEDC** and **COMPANY** agree that this Agreement shall not be construed more favorably for either party.

9.9 **Authority.** The parties to this Agreement warrant that the signatories below are authorized to act on behalf of the respective parties to this instrument, that they have signed the Agreement in their proper capacity and that the execution of this Agreement constitutes a binding act of each party to this Agreement.

9.10 **UNDOCUMENTED WORKERS.** During the term of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, **COMPANY** agrees to not knowingly employ any undocumented worker and if company is convicted of a violation under 8 U.S.C § 1324a(f), grant payments otherwise payable hereunder shall terminate.

9.11 **NOT ENGAGED IN BUSINESS WITH SUDAN, IRAN OR FOREIGN TERRORIST ORGANIZATION.** Pursuant to Section 22.152, Texas Government Code,

COMPANY warrants, represents, and agrees that **COMPANY** is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts as a company that engaged in business with Sudan, Iran or a foreign terrorist organization.

8.14 VERIFICATION OF NO BOYCOTT OF ISRAEL. Pursuant to Section 2271.002, Texas Government Code, neither the **MEDC** nor the **CITY** may enter into a contract for goods or services unless the contract contains a written verification that the contracting party: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. By executing this Agreement, **COMPANY** verifies that **COMPANY** does not boycott Israel and will not boycott Israel during the term of this Agreement.

9.13 Changes in Economic Conditions. The covenants and obligations of the **MEDC** and the **CITY** contained in this Agreement are based on projections regarding the local, state, and national economy. In the event that either **MEDC** or the **CITY** are temporarily unable to perform their obligations under this Agreement due to a lack of funding caused by material changes in the economy, payments required by **MEDC** and/or the **CITY** may be temporarily abated until such time as funds are again available to **MEDC** and/or the **CITY**, and the term of this Agreement shall be extended based on the number of such payments actually abated. Alternatively, if there is a material change in the economy that causes a reduction in the funding available to either **MEDC** or the **CITY** so that **MEDC** and/or the **CITY** are unable to satisfy their obligations under this Agreement and under all other similar agreements to which **MEDC** and/or the **CITY** are parties, **MEDC**'s and the **CITY**'s obligations under this Agreement shall be reduced so that the funds available to **MEDC** and/or the **CITY** to perform under all similar incentive agreements are allocated proportionately among all such agreements, and the term of this Agreement shall be extended until such time as **MEDC** and/or the **CITY** are able to fully perform their obligations hereunder.

[Remainder of Page Intentionally Left Blank: Signature Pages Follow]

CITY:

CITY OF MISSION

By: _____
RANDY PEREZ,
CITY MANAGER

Date: _____

MEDC:

MISSION ECONOMIC DEVELOPMENT CORPORATION

By: _____
TECLO J. GARCIA,
CHIEF EXECUTIVE OFFICER

Date: _____

COMPANY:

OLIVE GARDEN HOLDINGS, LLC

By: Angela Simmons

Name: Angela Simmons

Title: Senior Vice President, Corporate Tax

Date: May 3, 2023

CORPORATE ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF Orange

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This instrument was acknowledged before me by Angela M. Simmons
Managing Member, for **OLIVE GARDEN HOLDINGS, LLC**, a limited liability company
authorized to do business in the State of Texas, on behalf of said company, this 3rd day of
~~April~~^{May}, 2023.



Jeanette Rivera
Notary Public – State of Florida

CORPORATE ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF HIDALGO §

This instrument was acknowledged before me by **RANDY PEREZ**, City Manager for the **CITY OF MISSION**, a home-rule Texas municipal corporation, on behalf of said corporation, this _____ day of April, 2023.

Notary Public – State of Texas



CORPORATE ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF HIDALGO §

This instrument was acknowledged before me by **TECLO J. GARCIA**, Chief Executive Officer for the **MISSION ECONOMIC DEVELOPMENT CORPORATION**, a Texas 4B economic development corporation, on behalf of said corporation, this _____ day of April, 2023.

Notary Public – State of Texas