

CITY OF LEAGUE CITY

COUNTY OF GALVESTON

STATE OF TEXAS

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVES GRANT AGREEMENT

This Chapter 380 Economic Development Incentives Grant Agreement ("Agreement") is made by and between the City of League City, Texas ("City"), a home rule Municipal Corporation of the State of Texas, located at 300 West Walker Street, League City, Texas, 77573, and Salt & Pepper Restaurants Inc. (the "Grantee"), located at 2502 South Gulf Freeway, League City, Texas, 77573.

RECITALS:

WHEREAS, the City is authorized, pursuant to Chapter 380 of the Texas Local Government Code, to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money, to promote state or local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the Grantee proposes to develop a restaurant of approximately 8,000 square feet within the city limits of the City of League City, on a portion of an approximately 1.8 acre site generally located along Town Center Drive and more specifically described as an 80,000 square feet portion of Lot 10 of Victory Lakes Commercial Reserve DI as noted in Exhibit "A" to this Agreement, which is attached hereto and incorporated by reference; and

WHEREAS, the City desires to offer incentives to the Grantee over a period of time which will enable the Grantee to develop the Property defined herein; and

WHEREAS, the City believes the development contemplated by Grantee will contribute to the economic development of the City by generating employment and other economic benefits to the City; and

WHEREAS, the City is authorized under Chapter 321 of the Texas Tax Code to assess and collect a sales tax on the receipts from the sale at retail of taxable items within the City.

WHEREAS, to further encourage the Grantee to develop the subject Improvements to the Property in the City in a manner that establishes the area as a regional destination, and to promote local economic development and to stimulate

business and commercial activity in the City, the City desires to grant to the Grantee, under the terms and conditions set forth in this Agreement, a certain amount of public money consisting of a sum equal to a partial reimbursement of local sales tax based upon the volume of annual sales at this location.

NOW, THEREFORE, in consideration of the mutual benefits and premises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Authorization

The City has concluded that it is authorized to enter into this Agreement pursuant to Section 380.001, et seq. of the Texas Local Government Code and that the obligations of the City are valid and binding, subject to the conditions precedent as stated herein. The Grantee's execution and performance of this Agreement constitutes a valid and binding obligation of Grantee. The City acknowledges that the Grantee is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money, and Grantee acknowledges that City is acting in reliance upon Grantee's full and complete performance of its obligations under this Agreement in making its decision to commit substantial resources to the development of the Property.

2. Definitions

"*Calendar Year*" means the period beginning January 1 and ending December 31.

"*Certificate of Occupancy*" means that final document issued by the City of League City, Texas, entitled "Certificate of Occupancy," indicating that all applicable codes, regulations, and ordinances enforced by the City of League City have been unconditionally, fully and completely complied with in all respects. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, nor any temporary or conditional document authorizing temporary or conditional occupancy.

"*Chapter 380 Payment(s)*" means the amount(s) paid by the City to the Grantee under this Agreement.

"*Effective Date*" means the date this Agreement has been signed by all Parties.

"*Force Majeure*" means any event in which any Party shall be delayed, hindered in or prevented from the performance of any act required under this Agreement by reason of casualty, fire, flood, windstorm, earthquake, explosion, lightning, or other act of God; strikes, lockouts, riots, wars, or other civil disturbances; or similar accident not reasonably within the Party's control which materially impairs the Party's ability to perform any act required under this Agreement.

"Improvements" means the following specific real property improvements that Grantee proposes to have constructed or installed on the Property, consisting of a building containing approximately 8,000 square feet of enclosed area, as more particularly described in paragraph 4 of this Agreement.

"Sales Tax Revenues" means the amount of sales taxes collected by the City from retail sales generated from and within the Improvements, a portion of which will be repaid to Grantee in the form of Chapter 380 payments, as defined herein.

"The Property" means that certain tract of real property located in League City, Galveston County, Texas consisting of approximately 1.8 acres, more or less, and generally located along Town Center Drive and more specifically described as an 80,000 square foot portion of Lot 10 of Victory Lakes Commercial Reserve D1 as noted in Exhibit "A" to this Agreement, which is attached hereto and incorporated by reference.

3. Term

This Agreement will become enforceable upon the Effective Date and will terminate on the first to occur of: (a) December 31, 2018 (which date is the end of the five year payment period for the Chapter 380 payments provided for under paragraph 5 below or (b) termination of this Agreement by the City as provided herein. In recognition of the fact that the Chapter 380 payments provided for under paragraph 5 are, by necessity, calculated and paid after taxes have been collected by the City and, therefore, will always be paid in arrears, the Term of this Agreement will be deemed extended until any such Chapter 380 payments have been paid by the City to the Grantee.

4. Grantee's New Investment and Design Commitments

(a) The Grantee understands that the City is entering into this Agreement based upon the following understanding of the Grantee's new investment in the City and in consideration of the Grantee's adherence to the conditions set forth in subsections (d) and (e) of this paragraph 4, and the Grantee represents and warrants that as of the date of this Agreement and the Grantee's agreement thereto, the following fairly describes its proposed undertaking on the Property.

Grantee expressly represents that the dining establishment shall consist of not less than 8,000 sq. ft. of enclosed area, exclusive of parking lot(s), driveways, landscaping, or other areas adjoining the restaurant improvement. Grantee expressly represents that the parking lot(s) shall contain no less than 120 parking spaces.

(b) The value of the new investment by the Grantee shall be generally consistent with that represented in the Economic Impact Statement dated July 10,

2013 that the Grantee has submitted to the City, a true and correct copy of which is attached to this Agreement as Exhibit "B," and made a part hereof.

(c) The number of new full time jobs to be created by the proposed development shall be generally consistent with that represented in the Economic Impact Statement dated July 10, 2013 that the Grantee has submitted to the City, a true and correct copy of which is attached to this Agreement as Exhibit "B," and made a part hereof.

(d) The orientation and primary access point of the Improvements shall face Town Center Drive.

(e) Parking to be located along Town Center Drive shall be apportioned such that an amount deemed satisfactory to the City shall consist of diagonal or "pull in"/perpendicular.

5. Chapter 380 Payments – Sales Tax Calculus

Beginning January 1, 2014, and annually thereafter for the Term of this Agreement, the City shall pay Grantee a sum equal to 15% of that portion of Sales Tax Revenues generated on all sales which, for the applicable calendar year are not less than \$3,000,000.00 but do not exceed \$4,500,000.00 during the applicable calendar year. In the event Sales Tax Revenues generated on sales for the applicable calendar year exceed \$4,500,000.00 but do not exceed \$6,000,000.00, the City shall pay Grantee a sum equal to 25% of that portion of Sales Tax Revenues generated on all sales during the applicable calendar year. In the event Sales Tax Revenues generated on sales for the applicable calendar year exceed \$6,000,000.00, the City shall pay Grantee a sum equal to 35% of that portion of Sales Tax Revenues generated on all sales during the applicable calendar year until (i) final payment has been made by the City to Grantee as provided hereunder for the fifth year of the Term of this Agreement or (ii) termination of this Agreement by City as provided herein, whichever occurs first. It is understood that in the event Sales Tax Revenues generated on sales during the applicable calendar year shall be less than \$3,000,000.00, City shall not pay to Grantee a sum equal to any percentage of that portion of Sales Tax Revenues generated on sales during the applicable calendar year. Grantee shall submit a request for payment for the period from January 1 through June 30 and another request for payment for the period from July 1 through December 31 of each applicable year. The Owner's request for payment shall be accompanied by a true and correct copy of the Texas Sales and Use Tax Return filed with the Comptroller of Public Accounts for the corresponding reimbursement period from which the City can confirm the amount of Sales Tax Revenues for the period. The City shall make its payments to Grantee within 90 days of Grantee's delivery to the City of a request for payment.

7. Default

(a) If either party should default (the "Defaulting Party") with respect to any of its obligations under this Agreement and should fail, within sixty days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages, if any, for such default.

(b) If, within 90 days from the date upon which a Certificate of Occupancy is issued for the Improvements, the Grantee fails to deliver to the City documentation, including but not limited to paid invoices, bills paid, affidavits and lien releases, evidencing that the construction cost of the improvements which are the subject of this agreement is equal to or greater than the value of the new investment represented by the Grantee in the Economic Impact Statement dated July 10, 2013 and/or the number of new full time jobs are not created as represented in the Economic Impact Statement dated July 10, 2013 submitted to the City, then all of the grants to be provided by the City to the Grantee under this Agreement shall be considered revoked and this Agreement shall be considered of no further force and effect.

8. Changes in Law

If during the term of this Agreement state law applicable to sales and use taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to the Grantee under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever discretionary taxes and revenues are legally available to the City to be allocated to the Chapter 380 Payments. The foregoing does not require the City to use funds from sources which are not within the City's discretion to allocate to the Agreement in order to achieve the same economic benefits to both Parties, which would have resulted if the law had not changed.

9. Mutual Assistance

The City and the Grantee shall take all reasonable measures which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

10. Representations and Warranties

The City represents and warrants to the Grantee that this Agreement is within the scope of its authority and the provisions of its charter and that it is duly authorized

and empowered to enter into this Agreement. The Grantee represents and warrants to the City that it has the requisite authority to enter into this Agreement.

11. No Obligation by the Grantee to Commence Construction

In the event that the Grantee elects to not undertake the Improvements which are the subject of this agreement, this Agreement shall not create or impose any obligations upon the Grantee or City.

12. Attorney's Fees

In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

13. Statutes and Ordinances

Nothing in this Agreement shall alter the Grantee's obligation to comply with all state statutes, local ordinances, rules and regulations, covering the construction and operation of its development.

14. Section Names, Other Headings, and Construction

Section names or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to the singular shall include the plural, and to the plural the singular.

15. Severability

If for any reason any provision of this Agreement is held to be invalid by a court of competent jurisdiction, such holding shall not affect, impair or invalidate the remainder of the Agreement but shall be confined in its operation to the specific provision of this Agreement held invalid. The invalidity of any provision of this Agreement in any one or more instances shall not affect or prejudice in any way the validity of this Agreement in any other instance.

16. Amendment

This Agreement may only be amended, altered, or revoked by written instrument signed by both the Grantee and the City.

17. Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

18. Notice

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Grantee: Salt & Pepper Restaurants Inc  
250<sup>2</sup> South Gulf Freeway  
League City, Texas 77573

City: City Manager of the City of League City  
City Hall  
300 West Walker Street  
League City, Texas 77573

19. Interpretation

Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

20. Applicable Law

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue of any cause of action to enforce this agreement shall lie in Galveston County, Texas.

21. Counterparts

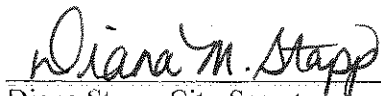
This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED this 6<sup>th</sup> day of AUGUST, 2013.

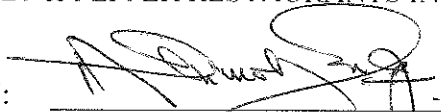
CITY OF LEAGUE CITY, TEXAS

  
Mike Loftin, City Manager

ATTEST:

  
Diana Stapp, City Secretary

SALT & PEPPER RESTAURANTS INC.

BY:   
Mohammed Amin Lakhani, President





**EXHIBIT "B"**  
**Economic Impact Statement**

## **Quaker Steak & Lube**

Date: July 10, 2013

### **Project Summary**

Quaker Steak, a national dining establishment is proposing to locate an **8,000** square foot facility in the "Entertainment District" located along Interstate 45 on remaining commercial property adjacent to Victory Lakes. The facility will provide League City residents and guests with a desirable entertainment destination. The establishment is anticipated to generate approximately **\$4,000,000** in annual sales

### **Facts Related to the Proposed Project**

- Total Site (in acres): **1.8 acres**
- Size of Structure: **8,000 square feet**
- Activity: Dining establishment
- Value of Improvements: **\$3,200,000**
- Total value of Investment: **\$4,440,000**
- Anticipated Employment: **50 Full Time, 100 Part Time employees**
- Anticipated Payroll: **\$1,120,000**

### **Proposed Economic Development Incentives**

#### **380 Development Agreement Grant**

- 5 Year Sales Tax Incentives
- Below \$3 million in annual sales: no incentive
- \$3 - \$4.5 million: a sum equal to 15% of League City sales tax revenue for site
- \$4.5 - \$6 million: a sum equal to 25% of League City sales tax revenue for site
- Greater than \$6 million: a sum equal to 35% of League City sales tax revenue for site

### **Grant Conditions**

- Orientation and primary access point of the building to be facing Town Center Drive
- A portion of parking to be located along Town Center Drive to be either diagonal or "pull in"/perpendicular