

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

This Economic Development Agreement (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”), and Kennington Alpha Business Center LLC, a Texas limited liability company, doing business as Kennington Commercial (“Company”) (collectively the “Parties” or singularly a “Party”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, Company is the owner of two buildings located at 4300Alpha Road and one building at 4350 Alpha Road, Farmers Branch, Texas (collectively, the “Improvements”); and

WHEREAS, Company has advised City that a contributing factor that would induce Company to make certain improvements to the exterior façade of the Improvements would be an agreement by City to provide an economic development grant to Company to defray a portion of the costs to construct the Façade Improvements (hereinafter defined); and

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

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

WHEREAS, promoting the expansion of existing businesses 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 this Agreement will further the objectives of City, will benefit City and City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the 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 Farmers Branch, 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 Façade Improvements; (ii) all necessary permits for the construction of the Façade Improvements pursuant to the plans therefore have been issued by all the applicable governmental authorities; and (iii) construction of the Façade Improvements has commenced.

“Company” shall mean Kennington Alpha Business Center LLC, a Texas limited liability company, doing business as Kennington Commercial.

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

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

“Expiration Date” shall mean the fifth (5th) anniversary date of the date of Completion of Construction of the last of the Improvements.

“Façade Grant” shall mean an economic development grant in the amount not to exceed Fifty Thousand Dollars (\$50,000.00) to be paid as reimbursement for costs paid for the eligible work described in **Exhibit “A”** in relation to constructing and installing the Façade Improvements.

“Façade Improvements” shall mean the renovation of the exterior façade of the Improvements as described in **Exhibit “A”**.

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

“Improvements” shall mean, collectively, the two buildings located at 4300 Alpha Road and the one building located at 4350 Alpha Road, Farmers Branch, Texas.

“Payment Request” shall mean a written request from Company to City for payment of the Façade Grant accompanied by: (i) copies of paid invoices, receipts and other evidence of the costs incurred and paid by Company for the Façade Improvements; (ii) digital photographs of the Improvements prior to and following Completion of Construction of the Façade Improvements; and (iii) such other information, as may reasonably be requested by City.

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

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

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

Façade Improvements

3.1 Façade Improvements. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Façade Improvements to occur within ninety (90) days after the Effective Date, and subject to events of Force Majeure to cause Completion of Construction thereof to occur within twelve (12) months thereafter.

3.2 Design and Construction Standards. Company shall design and construct the Façade Improvements in accordance with plans approved by City and in accordance with other applicable ordinances, regulations and local law. Company shall submit plans for the design and construction of the Façade Improvements to City, and use best efforts to obtain approval within thirty (30) days after the Effective Date.

3.3 Commercial Façade Revitalization Program. Company shall, in connection with the Façade Improvements, comply with the Farmers Branch Commercial Façade Revitalization Program.

Article IV

Economic Development Grant

4.1 Subject to the obligation of Company to repay the Façade Grant pursuant to Section 5.2 hereof, and the continued satisfaction of all the terms and conditions of this Agreement by Company, City agrees to provide Company with the Façade Grant to be paid in a single lump sum payment within thirty (30) days after City's receipt of the Payment Request following Completion of Construction of the last of the Façade Improvements and City verification of the costs paid and incurred by Company for the Façade Improvements. Failure of Company to submit a Payment Request for the Façade Grant, accompanied by the required records, documentation and digital photographs, within sixty (60) days after Completion of Construction of the Façade Improvements shall result in forfeiture of the payment of the Façade Grant.

4.2 The Façade Grant made hereunder shall be provided solely from lawful available funds. City shall have no obligation or liability to pay any portion of the Façade Grant unless City appropriates funds to make such payment during the budget year in which the payment of the Façade 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.

Article V

Conditions to Economic Development Grant

The obligation of City to pay the Façade 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.

5.1 Payment Request. Company shall, as a condition precedent to the payment of the Façade Grant, provide City with the applicable Payment Request.

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

5.3 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.

5.4 Façade Improvement Plans. City shall have approved plans for the Façade Improvements.

Article VI

Termination; Repayment

6.1 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) 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) by City, if Company suffers an event of Bankruptcy or Insolvency;
- (e) 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 Impositions); or
- (f) 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.

6.2. Repayment. In the event the Agreement is terminated by City pursuant to Section 6.1(c), (d), (e), or (f), Company shall immediately repay to City an amount equal to the Façade Grant previously paid by 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 City) as its prime or base commercial lending rate, from the date on which the Grant(s) is paid by City until such Grant(s) is refunded by Company. The repayment obligation of Company set forth in this section 6.2 hereof shall survive termination.

6.3 Right of Offset. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City 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 or not the debt due City has been reduced to judgment by a court.

Article VII

Miscellaneous

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

7.2 Limitation on Liability. It is understood and agreed between the Parties that 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. 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 Company's performance of the conditions under this Agreement.

7.3 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.

7.4 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: Charles S. Cox, City Manager
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

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

If intended for Company, to:

Attn: Clayton Kennington
Kennington Alpha Business Center LLC,
dba Kennington Commercial
4514 Travis Street, Suite 312
Dallas, Texas 75291

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 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.

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

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

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

7.13 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.

7.14 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 City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

7.15 Right of Offset. City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from 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 City has been reduced to judgment by a court.

7.16 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 Façade Grant, and any other funds received by Company from City as of the date of such violation within one hundred twenty (120) days after the date 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)

SIGNED AND AGREED on this _____ day of _____, 2018.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles S. Cox, City Manager

Attest:

Amy Piukana, City Secretary

Approved as to Form:

Peter G. Smith, City Attorney

SIGNED AND AGREED on this _____ day of _____, 2018.

**KENNINGTON ALPHA BUSINESS CENTER LLC,
a Texas limited liability company,
dba Kennington Commercial**

**BY: KENNINGTON PROPERTY HOLDINGS LTD.,
a Texas limited partnership,
Its Member**

**BY: DAVE KENNINGTON, LLC,
a Texas limited liability company,
its General Partner**

By: _____
Clayton Kennington, Manager/Member

EXHIBIT “A”

Description of Façade Improvements at 4300 - 4350 Alpha Road

Complete façade remodel of existing buildings, including stone removal, paint, storefront replacement, grading improvements to ensure accessibility, and landscaping, as further described in the following pages. Work eligible to be reimbursed from Grant funds includes:

- Façade and soffit work
- Installation of rock salt sidewalks
- Installation of ADA ramps
- Curb and gutter landscaping
- Brick and relay on façade
- Install Stucco soffits
- Add steel support columns
- New fascia design for signage
- Add new storefront doors and glazing
- Paint entirety of exterior on all buildings
- Rewire/install façade sign circuitry
- Add new recessed can trims
- Add new LED wall packs

Upon completion, building Façade s will generally appear as set forth in the following renderings:



ABC REMODEL - ELEVATIONS
ABC REVITALIZATION INITIATIVE
4300-4350 ALPHA ROAD

Job #: 11218
Date: 02.22.2018
Drawn by: JCC

gff ARCHITECTS

2808 Fairmount Street, Suite 300
Dallas, Texas 75201 | 214.363.1500

1305 West 7th Street, Suite 110
Fort Worth, Texas 76107 | 817.363.1500