RESOLUTION NO. 2016-12-95

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING RESOLUTION 2015-02-13 AUTHORIZING THE CITY MANAGER TO EXECUTE ECONOMIC DEVELOPMENT AGREEMENT(S) ATTACHED HERETO AS EXHIBIT 1 PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND IN N OUT BURGER, INC. ("IN N OUT"); PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, In N Out Burger, Inc. is a leading national hamburger restaurant chain; and

WHEREAS, In N Out Burger, Inc. has purchased approximately twenty (20) acres of real property in Lancaster, Texas and desires to construct and occupy approximately a one hundred thirty thousand (130,000) square foot facility (hereinafter defined as the "Premises"), and construct improvements thereon for a food processing and distribution operation; and

WHEREAS, In N Out Burger's development of the Premises will provide employment opportunities within the City; and

WHEREAS, the location of In N Out Burger, Inc., Inc. on the Premises will result in a significant capital investment and improvements on the Premises; and

WHEREAS, In N Out Burger, Inc. has advised the City that a contributing factor that would induce the company to construct and occupy the facility would be an agreement by the City to provide an economic development grant to the company; and

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

WHEREAS, the 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 the City; and

WHEREAS, the City has determined that making an economic development grant to In N Out Burger, Inc. in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, City desires to authorize the City Manager to enter into an Economic Development Agreement with In N Out Burger, Inc. pursuant to Chapter 380 of the Texas Local Government Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the City Manager is hereby authorized to execute an Economic Development Agreement, which is attached hereto and incorporated herein as Exhibit 1, pursuant to Chapter 380 of the Texas Local Government Code (and any amendments thereto, including any related instruments), on behalf of the City of Lancaster, Texas, with In N Out Burger, Inc. (and its affiliated and related entities).

SECTION 2. That all provisions of the resolutions of the City of Lancaster, Texas, in conflict with the provisions of this resolution and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said resolution which shall remain in full force and effect.

SECTION 4. This resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016.

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED:

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

Exhibit "1"

STATE OF TEXAS §
§ **Economic Development Agreement**
COUNTY OF DALLAS §

This Economic Development Agreement ("Agreement") is made by and between the City of Lancaster, Texas ("City"), and In N Out Burger, Inc. a California corporation, (the "Company"), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, the Company has purchased approximately 20 acres of real property in the City of Lancaster, Texas, and being more particularly described in **Exhibit "A"** (the "Property"); and

WHEREAS, the Company intends to construct and occupy an approximately one hundred thirty thousand (130,000) square foot facility and related infrastructure for a food processing and distribution center (the "Project"); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Real Estate Taxes (hereinafter defined); and

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

WHEREAS, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the Premises tax base and economic vitality of the City; and

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

WHEREAS, the 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 the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the 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

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Annual Grant(s)" shall mean annual economic development grants to be provided by the City in an amount equivalent to 60 percent (60%) of the Real Property Taxes assessed against the Premises for a given tax year for a period of eight (8) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

"Casualty" shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

"City" shall mean the City of Lancaster, Texas.

"Commencement Date" shall mean the later of (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the Company's occupancy of the improvements; and (b) January 1, 2018.

"Company" shall mean In N Out Burger, Inc., a California corporation.

"Company Affiliate" shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company's parent.

"Effective Date" shall mean the last date of execution hereof.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of such party'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 proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Event of 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 action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

"Expiration Date" shall mean seventh (7th) year after the payment of the first Annual Grant.

"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 the Company or any property or any business owned by Company within the City.

"Premises" shall mean the real property described on Exhibit "A" with or without improvements."

"Payment Request" shall mean a written request from Company to the City for payment of an Annual Grant.

"Project" shall mean the development of the Premises, by the design, construction and maintenance of new improvements and related infrastructure for an approximately 130,000 square foot food processing and distribution facility and/or secondary office building.

"Real Property" shall mean all real estate ad valorem taxes assessed by the City on the real property, with or without improvements.

"Related Infrastructure" shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issue "Certificate of Occupancy" at completion of project activities.

"Required Use" shall mean Company's continuous occupancy of the improvements and the Company's continuous operation of a food processing and distribution center on the Premises.

"Taxable Value" shall mean the assessed value of the Premises as certified by the appraisal district, or its successor, for a given year.

Article II
Term

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and end on the eighth (8th) anniversary of the date of issuance by the City of a final certificate of occupancy for the Project.

Article III
Economic Development Grants

3.1 **Annual Grants**. Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with the Annual Grants to be paid on March 1 of each calendar year, (or the immediately following business day of March 1 is not a business day), beginning with March 1 of the first full calendar year following the Commencement Date, provided the City has timely received the Real Estate Taxes assessed against the Premises in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such Real Estate Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the Real Estate taxes assessed against the Premises for tax year 2016 is $100,000.00 then the amount of the first Annual Grant for the Premises for Tax Year 2016 would be, $60,000.00 ($100,000.00 x 60%), and would be paid on March 1, 2017.

3.2 **Grant Limitations**. Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue**. The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest**. In the event the Company or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after an Annual Grant has been paid for such Premises for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds**. In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less

than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

Article IV
Conditions to the Economic Development Grant

The obligation of the City to provide the Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously own and occupy the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence Project construction on the Premises within twelve months (12 months) of the execution date of this agreement.

4.3 The Company shall not have an uncured breach or default of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

Article V
Termination

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

(a) by mutual written agreement of the parties;
(b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
(c) by City, if any Impositions owed to the 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);
(d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
(e) 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.
(f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

5.2 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

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 the City assumes no responsibilities or liabilities to third parties in connection with these actions.

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 among the parties.

6.4 **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. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

6.5 **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 such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster
Attn: Opal Mauldin Robertson
City Manager
P. O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

In N Out Burger, Inc.
Attn: Carl G. Van Fleet
Executive Vice President Planning
& Development
13502 Hamburger Lane
Baldwin Park, California 91706-5885

6.6 **Entire Agreement**. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 **Governing Law**. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in 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 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.9 **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.

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

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company Affiliate. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any attempted assignment by the Company, except to a Company Affiliate, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement. Notwithstanding the foregoing, in the event that the Company ceases to lease the Property prior to the end of the Term of this Agreement, Company may assign this Agreement to the then-current owner of the Property, subject to the City's consent, which shall not be unreasonably withheld.

6.12 **Recitals**. The recitals to this Agreement are incorporated herein.

6.13 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 **Survival of Covenants**. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Premises.

Signature page to follow

EXECUTED in triplicate originals on this 19th day of December, 2016.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin-Robertson, City Manager

Attest:

By: _____
Sorangel O. Arenas, City Secretary

Approved as to Form:

By: _____
Robert E. Hager, City Attorney

EXECUTED on this 8TH day of FEBRUARY, 2017

IN-N-OUT BURGER, ~~INC.~~ CW

By: _____
Carl G. Van Fleet, Executive Vice President
Planning & Development

EXHIBIT A

LEGAL DESCRIPTION

BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

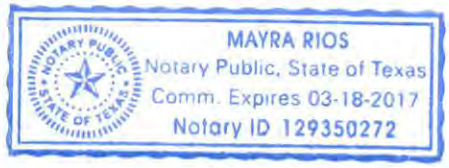
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Opal Mauldin Robertson, City Manager of the City of Lancaster, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 19th day of December, 2016.

Mayra Rios
Notary Public, State of Texas

My Commission Expires:

03-18-2017



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Los Angeles)

On February 8, 2017, before me, Lori Brazzill, Notary Public, personally appeared Carl G. Van Fleet who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

LORI BRAZZILL
Notary Public - California
Los Angeles County
Commission # 2176407
My Comm. Expires Jan 18, 2021

Lori Brazzill
Notary Public

[SEAL]

RESOLUTION NO. 2016-12-96

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING AN ECONOMIC DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 380, TEXAS LOCAL GOVERNMENT CODE, BY AND BETWEEN THE CITY OF LANCASTER AND IN N OUT BURGERS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, In N Out Burgers is a leading national hamburger restaurant chain; and

WHEREAS, In N Out Burgers, a national hamburger restaurant chain, desires to construct and occupy an approximately one hundred thirty thousand (130,000) square foot facility on property owned by the company in the City of Lancaster, Texas (hereinafter defined as the "Premises"), for a food processing and distribution center; and

WHEREAS, the City Council has approved Resolution 2015-02-14 which approved a Chapter 380 incentive agreement (hereinafter called "Agreement"); and

WHEREAS, the agreement was executed by the City, however was not executed by In N Out Burgers, Inc.;

WHEREAS, the executed agreement continues to provide an enhancement to the economic development well-being of the City; and

WHEREAS, the City Council desires to ratify such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. That the agreement by and between IN N Out Burgers, Inc. and its affiliates and/or entities and the City of Lancaster, dated February 9, 2015 are hereby ratified and in full force and effect as approved in Resolution 2015-02-14.

SECTION 2. That all provisions of the resolutions of the City of Lancaster, Texas, in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said resolution which shall remain in full force and effect.

SECTION 4. This resolution shall take effect immediately from and after its passage, as the law and charter in such cases provide.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016.

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED:

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

Exhibit "1"

STATE OF TEXAS §
§ **Economic Development Agreement**
COUNTY OF DALLAS §

This Economic Development Agreement ("Agreement") is made by and between the City of Lancaster, Texas ("City"), and In N Our Burger, Inc., a California corporation, (the "Company"), acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, the Company has purchased approximately twenty acres of real property in the City of Lancaster, Texas, and being more particularly described in **Exhibit "A"** (the "Property"); and

WHEREAS, the Company intends construct and occupy an approximately one hundred thirty thousand square foot (130,000) facility and related infrastructure for a food processing and distribution operation (the "Project"); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to defray a portion of the costs of acquisition, installation and maintenance of certain Tangible Personal Property (hereinafter defined); and

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

WHEREAS, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the Premises tax base and economic vitality of the City; and

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

WHEREAS, the 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 the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement is in accordance with the City Economic Development Program and will: (i) further the objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the 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

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Annual Grant(s)" shall mean annual economic development grants to be provided by the City in an amount equivalent to forty percent (40%) of taxes assessed and paid against the Tangible Business Personal Property for a given tax year for a period of eight (8) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

"Casualty" shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

"City" shall mean the City of Lancaster, Texas.

"Commencement Date" shall mean the later of (a) January 1 of the calendar year immediately following the date a certificate of occupancy is issued by the City for the Company's occupancy of the improvements; and (b) January 1, 2018.

"Company" shall mean In N Out Burger, Inc., a California corporation.

"Company Affiliate" shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company's parent.

"Effective Date" shall mean the last date of execution hereof.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of such party'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 proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Event of 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 action or

in-action (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

"Expiration Date" shall mean the seventh (7th) year after the payment of the first Annual Grant.

"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 the Company or any property or any business owned by Company within the City.

"Premises" shall mean the real property described on Exhibit "A."

"Payment Request" shall mean a written request from Company to the City for payment of an Annual Grant.

"Project" shall mean the construction and occupancy of an approximate one hundred thirty thousand (130,000) square foot facility and related infrastructure for the operation of a food processing and distribution center.

"Required Use" shall mean Company's continuous occupancy of the Improvements and the Company's continuous operation of a food processing and distribution center on the Premises.

"Tangible Personal Property" shall have the same meaning assigned by Tax Code, Section 1.04 and shall mean all tangible personal property, equipment, fixtures, and machinery, excluding inventory and supplies, owned or leased by the Company and located on the Premises at the Project on January 1 of each applicable tax year, as rendered to the Dallas Central Appraisal District by Company on an annual basis.

"Taxable Value" shall mean the assessed value of Tangible Business Personal Property as certified by the appraisal district, or its successor, for a given year.

Article II
Term

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and end on the third (8th) anniversary of the date of issuance by the City of a final certificate of occupancy for the Project.

Article III
Economic Development Grants

3.1 **Annual Grants**. Subject to the Company's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with the Annual

Grants to be paid on March 1 of each calendar year, (or the immediately following business day if March 1 is not a business day), beginning with March 1 of the first full calendar year following the Commencement Date of the next two consecutive years thereafter, provided the City has timely received the ad valorem taxes assessed against the Tangible Personal Property in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such ad valorem taxes with constructive respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the ad valorem taxes assessed against the Tangible Personal Property for tax year 2016 is $10,000.00 then the amount of the first Annual Grant for the Tangible Personal Property for Tax Year 2014 would be, $4,000.00 ($10,000.00 x 40%), and would be paid on March 1, 2017.

3.2 **Grant Limitations**. Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue**. The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest**. In the event the Company timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Tangible Personal Property, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Tangible Personal Property or the amount of ad valorem taxes assessed and due for the Tangible Personal Property, or portion thereof, after an Annual Grant has been paid for such Tangible Personal Property for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant payment date, or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds**. In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination, the parties

shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

Article IV
Conditions to the Economic Development Grant

The obligation of the City to provide the Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously own and occupy the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than sixty (60) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence Project construction on the Premises within twelve months (12 months) from the execution date of this agreement.

4.3 The Company shall not have an uncured breach or default of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

4.5 The Company shall not be default of any of its city taxes or exemptions.

Article V
Termination

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

(a) by mutual written agreement of the parties;
(b) by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
(c) by City, if any Impositions owed to the 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);
(d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
(e) 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.
(f) should Company fail to return fully signed and executed agreement(s) to the City within 30 days of approval of agreement(s) by the Lancaster City Council, the agreement(s) and the incentive offer they represent, shall be deemed to be withdrawn and shall have no further affect.

5.2 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

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 the City assumes no responsibilities or liabilities to third parties in connection with these actions.

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 among the parties.

6.4 **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. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

6.5 **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 such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Lancaster
Attn: Opal Mauldin-Robertson
City Manager
P. O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

In N Out Burger, Inc.
Attn: Carl G. Van Fleet
Executive Vice President Planning
& Development
13502 Hamburger Lane
Baldwin Park, California 91706-5885

6.6 **Entire Agreement**. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 **Governing Law**. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in 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 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

6.9 **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.

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

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company Affiliate. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any attempted assignment by the Company, except to a Company Affiliate, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement. Notwithstanding the foregoing, in the event that the Company ceases to own the Property prior to the end of the Term of this Agreement, Company may assign this Agreement to the then-current owner of the Property, subject to the City's consent, which shall not be unreasonably withheld.

6.12 **Recitals**. The recitals to this Agreement are incorporated herein.

6.13 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 **Survival of Covenants**. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Premises.

Signature page to follow

EXECUTED in triplicate originals on this 19th day of December, 2016.

CITY OF LANCASTER, TEXAS

By: _____
Opal Mauldin Robertson, City Manager

Attest:

By: _____
Sorangel O. Arenas, City Secretary

Approved as to Form:

By: _____
Robert E. Hager, City Attorney

EXECUTED on this 8TH day of FEBRUARY, 2017

IN-N-OUT BURGER, INC.

By: _____
Carl G. Van Fleet, Executive Vice President
Planning & Development

EXHIBIT A

LEGAL DESCRIPTION

BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Opal Mauldin Robertson, City Manager of the City of Lancaster, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 19th day of December, 2016.

Mayra Rios
Notary Public, State of Texas

My Commission Expires:

03-18-2017

MAYRA RIOS
Notary Public, State of Texas
Comm. Expires 03-18-2017
Notary ID 129350272

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Los Angeles)

On February 8, 2017, before me, Lori Brazzill, Notary Public, personally appeared Carl G. Van Fleet who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

LORI BRAZZILL
Notary Public - California
Los Angeles County
Commission # 2176407
My Comm. Expires Jan 18, 2021

Lori Brazzill
Notary Public

[SEAL]

RESOLUTION NO. 2016-12-97

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS, RATIFYING THE TERMS AND CONDITIONS OF AN INCENTIVE GRANT BY AND BETWEEN IN N OUT BURGER, INC. AND THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING LEDC TO ENTER INTO A FORMAL AGREEMENT; PROVIDING AND EFFECTIVE DATE.

WHEREAS, pursuant to Lancaster Economic Development Corporation (hereinafter "LEDC") Resolution 2016-06 which was passed and approved on the 8th of November, 2016 by the Board of Directors of the Lancaster Economic Development Corporation (LEDC), offering an incentive grant to In N Out Burger, Inc.; and

WHEREAS, In N Out Burger has purchased approximately twenty (20) acres of real property in the City of Lancaster with the intent to construct and occupy an approximately one hundred thirty thousand (130,000) square foot food processing and distribution facility and create 65 new jobs; and

WHEREAS, the City of Lancaster and LEDC recognize the importance of their continued role in economic development in the community of Lancaster; and

WHEREAS, the City may provide incentives promoting economic development pursuant to Chapter 380 of the Texas Local Government Code, which authorizes loans and grants of a city's general funds pursuant to a "program" to stimulate business and commercial activity in the municipality; and

WHEREAS, pursuant to Texas Local Government Code, Chapter 501, et seq, as amended, LEDC, as a non-profit corporation, in accordance with the Act, shall promote development and redevelopment within the municipality and its vicinity and create new manufacturing and industrial facilities, distribution centers, warehouse facilities and related facilities, through the use of a sales tax, which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, pursuant to the City's Charter, the Act and applicable Texas Statutes, the City has the authority to enter into agreements as the City considers necessary or convenient to implement economic development in Lancaster, Texas; and

WHEREAS, pursuant to the Act and the bylaws of the Lancaster Economic Development Corporation, LEDC has authority to enter into agreements as LEDC considers necessary or convenient to implement economic development in Lancaster, Texas; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. The City Council ratifies the November 8, 2016 actions of the Board of Directors of the LEDC approving an incentive grant to In N Out Burger, Inc.

SECTION 2. The City Council authorizes LEDC to enter into an incentive agreement with In N Out Burger, Inc., which is attached hereto and incorporated herein as Exhibit A.

SECTION 3. This resolution shall be effective from and after its passage as provided by law.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 19th day of December, 2016.

ATTEST:

Sorangel O. Arenas, City Secretary

APPROVED:

Marcus E. Knight, Mayor

APPROVED AS TO FORM:

Robert E. Hager, City Attorney

RESOLUTION NO. 2016-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION OF LANCASTER TEXAS, (LEDC), IN SUPPORT OF A GRANT TO IN N OUT BURGER, INC. FROM FUNDS COLLECTED FROM ¼ OF 1 PERCENT ADDITIONAL SALES AND USE TAX FOR THE PROMOTION AND DEVELOPMENT OF NEW AND EXPANDED BUSINESS ENTERPRISES, AS AUTHORIZED BY STATE LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Lancaster Economic Development Corporation recognizes how important business and community development is to the vitality and growth of Lancaster; and

WHEREAS, In N Out Burger, Inc. has selected Lancaster as the location for their newest regional processing and distribution facility; and

WHEREAS, In N Out Burger, Inc., Inc. has requested a grant for reimbursement of 25% of permit fees not to exceed $30,000 associated with the construction and finish out of an approximately 130,000 square foot food processing and distribution facility located on property owned by In N Out Burger, Inc. in Lancaster, Texas ; and

WHEREAS, the Board of Directors of LEDC are responsible for the review and evaluation of Type A incentive applications; and

WHEREAS, the board of LEDC is also responsible for recommending Type A Incentive Grants to the Lancaster City Council for review and approval;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LANCASTER ECONOMIC DEVELOPMENT CORPORATION:

SECTION 1. That the Board of Directors of the Lancaster Economic Development Corporation approves the resolution and Incentive Agreement which is attached hereto.

SECTION 2. That this resolution shall take effect immediately from and after its passage and it is so duly resolved.

DULY PASSED and adopted on this 8th day of November, 2016.

APPROVED: Vanessa Sheffield, President

ATTEST: Mayra Ortiz, Executive Secretary

APPROVED AS TO FORM: Robert E. Hager, City Attorney

INCENTIVE AGREEMENT

This Incentive Agreement (the "Agreement") is entered into by and between the Lancaster Economic Development Corporation, a non-profit corporation chartered by the State of Texas, acting by and through its Board of Directors (hereinafter referred to as the "LEDC") and In N Out Burger, Inc.., a State of California corporation, licensed to do business in Texas. (hereinafter referred to as "the Company"), acting by and through its authorized officer, Carl G. Van Fleet, hereinafter referred to as ("the Company").

W I T N E S S E T H :

WHEREAS, the Lancaster Economic Development Corporation was established to promote enhanced business opportunities within the corporate limits of the City of Lancaster, Texas; and

WHEREAS, the LEDC recognizes the need to offer business incentives to develop real property within the City of Lancaster; and

WHEREAS, in order to maintain and enhance the economic and employment base within the City of Lancaster, it is in the best interests of the LEDC to enter into this Agreement in accordance with the terms provided herein; and

WHEREAS, the Company wishes to expand its operations as a viable economic project within the City thereby creating new business investment and new jobs in the City; and

WHEREAS, the Board of Directors of LEDC finds that the intended scope of the Project, hereinafter defined, is to construct and occupy approximately 130,000 square feet of manufacturing, office and distribution space on twenty acres in Lancaster owned by the company.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of employment, the attraction of major investment within the City which contributes to the economic development of Lancaster, and to the enhancement of the tax base for the City, the parties agree as follows:

I.
EFFECTIVE DATE; TERM OF AGREEMENT

This Agreement shall become effective upon the City Council of the City of Lancaster authorizing the LEDC to enter into an agreement with the Company and on the last date of execution of this Agreement by the LEDC and the Company, and shall continue for a period of one year (12 months) following the issuance of a Certificate of Occupancy for the Facility.

II.
DEFINITIONS

Whenever used in this Agreement, the following term shall have the meaning ascribed to it:

"City" shall mean the City of Lancaster, Texas

"Company" shall mean In N Out Burger, Inc., a California corporation.

"**Improvements**" shall mean the construction and finish out work necessary to commence company operations in their approximately 130,000 square foot facility located on Company land described in Exhibit A, Lancaster, Texas.

"**Premises**" shall mean the property described in **Exhibit A**, attached hereto and made a part hereof for all purposes, including any improvements made thereto.

"**Project**" shall mean the improvements, related infrastructure and occupancy activities associated with the location, construction, finish out and maintenance of the Company's approximately 130,000 square foot facility and operations in Lancaster, Texas.

"Related Infrastructure" shall mean all City development and building code requirements related to site preparation, water, wastewater, storm water, building construction etc. necessary to receive a City issue "Certificate of Occupancy" at completion of project activities.

III.
PROVISIONS RELATING TO INCENTIVE AGREEMENT

In N Out Burger, Inc.'s Obligations:

A. The Company will begin construction within twelve months (12 months) from the date of execution of this agreement and occupy approximately 130,000 square feet of space in the building located on approximately twenty acres owned by the Company in Lancaster, Texas as described in Exhibit A.

B. The Premises and improvements constructed thereon at all times shall be used in a manner that is consistent with the City of Lancaster's Comprehensive Zoning Ordinance, as amended and other applicable ordinances.

C. The Company agrees to provide any and all documentation necessary to confirm data required to implement provisions of the incentive grant.

LEDC's Obligations:

A. LEDC agrees to pay a grant to the Company for reimbursement of 25% of permit fees paid by the Company directly to the City of Lancaster not to exceed a grand total of $30,000 associated with the construction and preparation of their facility for

their business operations. The Company will pay the City of Lancaster the full cost of permit fees associated with the construction and finish out of their building and present to LEDC copies of actual paid receipts for said fees. LEDC will issue a reimbursement payment of twenty five percent (25%) of those receipts submitted not to exceed a grand total of $30,000 within 30 days of submittal after company receives a final Certificate of Occupancy from the City.

B. All grant of funds shall be made from available sales tax proceeds from the LEDC and, any grant made herein, is not pledged against future sales tax proceeds or the full faith and credit of LEDC or the City of Lancaster.

IV.

DEFAULT; RECAPTURE OF GRANT FUNDS

A. In the event the Company (i) fails to commence project and improvements on property located in Lancaster, Texas within one year of execution of this agreement (ii) fails to complete the Project in accordance with this Agreement; or (iii) materially breaches any of the terms or conditions of this Agreement, then the Company, after the expiration of the notice and cure periods described in Paragraph IV (B) below, shall be in default of this Agreement. As liquidated damages in the event of such non-cured default, INOB, shall refund to LEDC all grants previously paid by LEDC. The parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The parties further agree that the recapture of grant funds due LEDC as a result of the Company, default under this Agreement, shall be recoverable against the Company, its successors and assigns and shall continue as a lien on the Premises.

B. Upon breach by the Company, of any obligations under this Agreement, the LEDC shall notify the Company, in writing. The Company shall have ninety (90) days from receipt of the notice in which to cure any such default.

C. If the Company fails to cure the default within the time provided as specified in Paragraph IV(B) above, or, as such time period may be extended by written agreement of the parties, then the LEDC at its sole option shall have the right to demand repayment of the incentives it has made hereunder in accordance with this section IV.

D. Upon the LEDC's election under the preceding paragraph, all incentives shall be repaid as set forth in paragraph IV(A), and shall become due and payable ninety (90) days after notice to the Company of a non-cured default. The LEDC shall have all remedies provided by law for the collection of the grant funds. The LEDC at its sole discretion has the option to provide a repayment schedule. The obligation of the Company, to repay the grant funds to LEDC in the event of default shall survive the termination of this Agreement.

V.
SUCCESSORS AND ASSIGNS

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 assigns. This Agreement may be assigned only with the consent of the LEDC.

VI.

NOTICES

All notices required by this Agreement shall be addressed to the following, or other such other party or address as either party designates in writing, by certified mail, postage prepaid or by hand delivery:

In N Out Burger, Inc. to:

Carl G. Van Fleet
Executive Vice President Planning & Development
In N Out Burger, Inc.
13502 Hamburger Lane
Baldwin Park, California 91706-5885

LEDC to:

Ed Brady
Lancaster Economic Development Corporation
P.O. Box 940
Lancaster, Texas 75146

VII.
LEDC AUTHORIZATION

This Agreement was authorized by resolution of the LEDC, approved by its Board of Directors, authorizing its officer to execute this Agreement on behalf of the LEDC.

VIII.
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 be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

IX.
APPLICABLE LAW

THIS AGREEMENT SHALL BE CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS. Venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. This Agreement is performable in Dallas County, Texas.

X.

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.

XI.
ENTIRE AGREEMENT

This Agreement embodies the complete agreement 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. The provisions of this Agreement are hereby declared covenants running with the Premises and are fully binding on all successors, heirs, and assigns of the Company who acquire any right, title, or interest in or to the Premises, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement. While there is no obligation for the LEDC to fund future expansion, nothing herein precludes the Company from requesting further assistance on future projects.

XII.
RECORDATION OF AGREEMENT

A certified copy of this Agreement may be recorded in the Deed Records of Dallas County, Texas.

XIII.
INCORPORATION OF RECITALS

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

XIV.
EXHIBITS

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

EXECUTED in triplicate originals this 8th day of November, 2016.

LANCASTER ECONOMIC DEVELOPMENT CORPORATION

By: _____
Vanessa Sheffield, President

IN-N-OUT BURGER, ~~INC~~.

By: _____
Carl G. Van Fleet, Executive Vice President Planning & Development

EXHIBIT A

LEGAL DESCRIPTION

BEING Lot 2, in Block 1, of SouthPointe Corporate Center, an Addition to the City of Lancaster, Dallas County, Texas, according to the Map thereof recorded in cc#201300251920, of the Real Property Records of Dallas County, Texas.

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Vanessa Sheffield, President of the Lancaster Economic Development Corporation, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 8th day of November, 2016.

Mayra Rios
Notary Public, State of Texas

My Commission Expires:

03-18-2017

MAYRA RIOS
Notary Public, State of Texas
My Commission Expires
March 18, 2017

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Los Angeles)

On February 8, 2017, before me, Lori Brazzill, Notary Public, personally appeared Carl G. Van Fleet who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

LORI BRAZZILL
Notary Public - California
Los Angeles County
Commission # 2176407
My Comm. Expires Jan 18, 2021

Lori Brazzill
Notary Public

[SEAL]