

**AN AMENDED AGREEMENT FOR DEVELOPMENT INCENTIVES  
BETWEEN THE CITY OF BRIGHTON, COLORADO, AND  
OLIVE GARDEN HOLDINGS, LLC (d.b.a. OLIVE GARDEN ITALIAN  
RESTAURANT), A FLORIDA LIMITED LIABILITY COMPANY**

THIS AMENDED AGREEMENT is entered into between the City of Brighton, Colorado, a home rule municipal corporation (the "CITY"), and Olive Garden Holdings, LLC, (d.b.a. OLIVE GARDEN ITALIAN RESTAURANT), a Florida limited liability company (the "Company").

RECITALS

WHEREAS, the City Council, through the enactment of Resolution 99-24, has found and determined that the stimulation of economic development through the creation of new employment opportunities, the establishment of a sound tax base, and the promotion of business and industry, serves a valid public purpose and benefits the general welfare of the residents of Brighton; and

WHEREAS, the City Council, through the enactment of Resolution 99-24, has established a justification for an economic incentives program to foster economic development within the City; and

WHEREAS, the Company is under contract to purchase the property described in Exhibit "A", attached hereto and by this reference made a part hereof, such property consisting of approximately 7.512 acres at this time and anticipated to be 2.16 acres after replatting (the "Property"); and

WHEREAS, the Company has submitted an application for the development of a restaurant facility of approximately 7,800 square feet (the "Project") on the Property; and

WHEREAS, the Project will create employment opportunities and it is anticipated that the Project will increase the sales tax and real property tax base of the City; and

WHEREAS, the City desires to offer certain economic development incentives to the Company as an inducement to bring this Project to the City.

NOW, THEREFORE, in consideration of the recitals, promises, mutual covenants and agreements herein contained, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Company agree as follows:

AGREEMENT

SECTION 1. DEFINITIONS. Unless the context otherwise clearly indicates, the following words and phrases shall be defined as follows:

- 1.1 “Agreement” shall mean this agreement for Development Incentives by and between the City of Brighton and the Company, together with all exhibits hereto.
- 1.2 “Certificates of Occupancy” shall have the meaning as provided in the most recently adopted Uniform Building Code, as amended by the City.
- 1.3 “Development Incentive Package” shall be comprised of an annual share back of Sales Tax and Use Tax as described in Section 5. In no event shall the portion of the Development Incentive Package related to Sales Tax to the Company exceed \$250,000 (Two-Hundred Fifty Thousand Dollars). The portion of the Development Incentive Package related to Use Tax shall be uncapped and waived in accordance with Section 5.
- 1.4 “Opening Date” shall be the first day that the Company is open to the general public for business, and it shall not be later than 365 days from the start of vertical construction, as specified in Section 4 herein.
- 1.5 “Project” shall mean the approximately 7,800 square foot restaurant facility to be developed by the Company on the Property.
- 1.6 “Property” shall mean the approximately 7.512 acre parcel, which after replatting, will be an approximately 2.16-acre parcel at the Prairie Center located at the SEQ of Eagle Blvd, and identified by Adams County Assessor Parcel No. 0156921103008. Parties acknowledge the parcel will be re-platted and a new Parcel No. will be available at that time.
- 1.7 “Sales Tax” shall be as defined in § 3-28-20 of the Brighton Municipal Code.
- 1.8 “Use Tax” shall be as defined in §3-32-20 of the Brighton Municipal Code and shall be limited herein to only the use tax related to building materials for construction of the Project on the Property (the “Building Use Tax”).

SECTION 2. PUBLIC PURPOSE. The City Council hereby declares that there are particular public purposes for the economic development incentives contained in this Agreement. The Council finds that there will be the general benefit to the residents of Brighton of increased employment, long term tax base growth, and related economic development benefits. In addition to these general public

benefits, the City Council finds that there are at least two discrete and particularized public purposes:

- 2.1 These incentives will permit the Company to build and operate a Project which will contribute to the development of new businesses within the City, and will result in substantial expansion of new employment and tax base within the City.
- 2.2 The Project anticipates investing approximately \$5.2 million into the development of the Project and to create eighty (80) total job positions, a mix of full and part-time employees, for a total of fifty (50) additional full-time equivalent positions.

SECTION 3. ELIGIBILITY. The City Council has reviewed the economic development incentive request, in conjunction with Resolution 99-24, and finds that the economic benefit to the City by virtue of development of the Project in the City is clearly demonstrated and that the proposal is eligible for economic incentives, based upon the following:

- 3.1 The proposed Project will put to beneficial use presently underutilized real property in the City of Brighton.
- 3.2 The proposed Project will result in new employment opportunities in the City of Brighton.
- 3.3 The proposed Project will increase the property tax base and sales tax base previously established within Brighton.

SECTION 4. CONSTRUCTION OF PROJECT. The Company shall begin construction of the Project by April 30, 2025, and continuously pursue construction of the Project until completion. The Company shall open the Project to the general public for business by the end of 2025, but no later than May 31, 2026.

SECTION 5. ECONOMIC DEVELOPMENT INCENTIVE – REBATE OF SALES AND WAIVER OF USE TAX.

- 5.1 The City agrees to rebate 100% of the one percent received by the City in Sales Tax General Fund collections or otherwise stated as 50% of the City's General Fund Sales Tax collections, up to a maximum of \$250,000 (Two-Hundred Fifty Thousand Dollars) for a period not to exceed eight (8) years from the date of Opening, whichever comes first.
- 5.2 The Company shall receive a waiver of one hundred percent (100%) of actual Use Tax paid, which would be 2.5%.

- 5.3 The City agrees that fees to be paid shall be those fees in effect as of the date of execution of the original Agreement signed July 19, 2023.
- 5.4 For purposes of any sales and use tax rebates provided for herein, the following procedures shall apply:
- a. On or before the end of every six (6)-month period for which sales tax rebates are available, commencing with the first day of the month following the Opening Date hereunder, the Company shall submit to the City Manager, with a copy to the City Finance Director, a written request for the rebate for the prior six (6)-month period.
  - b. Subject to the conditions and limitations set forth herein, within sixty (60) days of receipt of said written request for rebate from the Company, the City shall rebate to the Company via wire transfer or check fifty percent (50%) of the General Fund Sales Taxes paid by the Company to the City for sales within the City of Brighton not to exceed a period of eight (8) years from the date of the Certificate of Occupancy or up to \$250,000 (Two-Hundred Fifty Thousand Dollars), whichever comes first.
  - c. The Company shall receive a waiver of one hundred percent (100%) of actual Use Tax paid, which would be 2.5%, and will appear as a credit on the permit.
  - d. No interest shall accrue on any sum payable to the Company.
  - e. The right of rebate shall be personal to the Company and shall not run with the land.
  - f. The Company shall keep accurate books and records of all business transactions as of the Opening Date. During regular business hours, and upon a 90-day notice to the Company, the City or its designee is hereby authorized to review the Company's books and records for a period up to seven (7) years after all obligations under this Agreement are complete. Such review shall be conducted at the expense of the City. Findings from a review of the Company's books and records may impact the amount of the Sales Tax rebates and reductions.

SECTION 6. SUBORDINATION TO USE TAX BONDS. Nothing herein shall be construed to grant to, or create in, the Company any right, claim, lien or priority in or to the City's sales and use tax revenue superior to or on a parity with the rights, claims, or liens of the holders of any sales or use tax revenue bonds, notes, certificates or debentures payable from or secured by any sales taxes, use taxes, or any combination thereof, existing or hereafter issued by the City. Moreover, nothing herein shall be construed to deny or limit the City's full authority to issue such sales and use tax bonds. Accordingly, the Company specifically acknowledges

and agrees that all rights to the Development Incentive Package from sales and use taxes contemplated under this Agreement are, and at all times shall be, subordinate and inferior to the rights, claims, and liens of the holders of any and all such sales and use tax revenue bonds, notes, certificates or debentures payable from or secured by any sales or use taxes existing or hereafter issued by the City. It is further acknowledged that the development incentive sales tax rebates to the Company shall be available only from City sales and use tax revenues collected from the Project on the Property and remitted to the City and only to the extent herein provided, and no obligation of the City pursuant to this Agreement shall provide access to any other City revenue source, nor shall such obligation be deemed to create any pledge of credit of the City.

SECTION 7. ANNUAL APPROPRIATION OF FUNDS BY THE CITY. The parties hereto acknowledge and agree that the City has advised and opined that the economic development incentive sales tax and use tax rebates provided for under this Agreement (and in particular Section 5) are contingent upon funds for such purpose being available, budgeted and appropriated annually. In the event that the City does not budget and appropriate sufficient funds for any payment herein at any time, the City shall provide written notice to the Company that payment or payments will not be made. Further, if any court of competent jurisdiction determines that this Agreement violates the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the parties agree that the Agreement shall immediately convert to a one-year contract, with automatic annual renewal provisions, subject only to failure by the City to appropriate funds annually. The failure to appropriate or have funds available shall not be a breach of this Agreement.

SECTION 8. GENERAL OBLIGATIONS OF THE COMPANY. As set forth in Section 4 of this Agreement, the parties have agreed that this Agreement is specifically subject to and conditioned upon certain performance obligations by the various parties. In particular, the Company shall comply with all the provisions of the Development Improvement Agreement with the City, pursuant to which the Company will agree to comply with all City codes, ordinances, resolutions, and regulations, and pay all taxes, fees and expenses required by the City in conjunction with the development and construction of the Project. The Company acknowledges that it is responsible for compliance with the obligations and responsibilities as identified in this Agreement.

SECTION 9. NO VESTED PROPERTY RIGHTS. It is understood and agreed by the parties that no vested property rights are granted by this Agreement. The Company represents to the City that there are no vested rights to the Property from the County of Adams or any other governmental entity, and the Company hereby waives and releases any rights which may have been so granted.

SECTION 10. EVENTS OF DEFAULT; REMEDIES.

- 10.1 Default or an Event of Default under the Agreement shall mean that one or more of the following events shall have occurred during the term of this Agreement:
- a. The Company, in violation of Section 12 of this Agreement, assigns or attempts to assign this Agreement, the Project, or any part of the Property; or
  - b. The Company fails to commence, diligently pursue, and complete construction of the Project as required by Section 4; or
  - c. The Company fails to substantially observe or perform any other covenant, obligation, or agreement required under this Agreement; or
  - d. The Company files for protection under the United States Bankruptcy Code during the term of the Agreement wherein the City no longer has its consideration for this Agreement.
- 10.2 Upon the occurrence of any Event of Default, the City shall provide written notice to the Company. The Company shall immediately proceed to cure or remedy such Default, and in any event, such Default shall be cured within thirty (30) days after receipt of the notice, or such cure shall be commenced and diligently pursued to completion within a reasonable time if curing cannot be reasonably accomplished within thirty (30) days.
- 10.3 Whenever any Event of Default occurs and is not cured under subsection 10.2 of this Agreement, the City may take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance of this Agreement, or to seek any other right or remedy at law or in equity, including damages.
- 10.4 Specifically, if the Company fails to construct the Project or closes the Company prior to the eight years, any obligation by the City to rebate ceases to exist upon the issuance of the notice of default. If the Project fails to meet the Opening Date, the Agreement is null and void, and the City owes no obligation to rebate any portion of sales and use tax set forth in this Agreement, unless the Company obtains an extension in writing from the City Manager to extend the Opening Date.

10.5 The rights and remedies of the parties to this Agreement as provided herein are cumulative except as otherwise expressly limited, and the exercise by either party of any one or more of such rights or remedies shall not preclude the exercise by that party, at the same or different times, of any other right or remedy for any other Default by the other party.

SECTION 11. DELAYS. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, pandemics, orders of civil or military authorities, failure to obtain permits, approvals or consents (including building permits and certificates of occupancy) from local, state, or federal agencies, or other causes, but only to the extent that such causes are beyond the normal control of such parties.

SECTION 12. ASSIGNMENT. This Agreement and the proceeds or obligations hereof are not assignable by the Company.

SECTION 13. TERMINATION. This Agreement, and the terms and provisions hereof, shall terminate upon the earlier of the following to occur: (a) the date at which the Company has received the full amount of the Development Incentive Package; or (b) the last day of the eighth (8<sup>th</sup>) year following the Opening Date.

SECTION 14. NO THIRD PARTY BENEFICIARIES. The City shall not be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

SECTION 15. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective upon mailing, deposited in the U.S. mail, postage prepaid, and addressed to the intended recipient as follows. Any party can change its address by written notice to the other given in accordance with this paragraph.

CITY OF BRIGHTON  
ATTN: CITY MANAGER  
500 SOUTH 4<sup>TH</sup> AVENUE  
BRIGHTON, CO 80601

Marty Wilson  
Manager, Development Incentives and Property Tax  
Darden Restaurants, Inc.  
1000 Darden Center Drive  
Orlando, FL 32837  
407-245-6892  
mbwilson@darden.com

SECTION 16. BINDING EFFECT. This Agreement shall be binding upon the City and the Company.

SECTION 17. GOOD FAITH. Each party hereto shall exercise good faith in the performance and enforcement of this Agreement. The Company acknowledges the benefits of this Agreement and agrees to use good faith in interviewing and hiring qualified Brighton residents for positions at the Project, subject to restrictions in existing labor contracts.

SECTION 18. VENUE. This Agreement is being executed and delivered and is intended to be performed in the County of Adams, State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement and interpretation of this Agreement.

SECTION 19. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

SECTION 20. WAIVER OF BREACH. A written waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

SECTION 21. SECTION CAPTIONS. The captions of the sections of this Agreement are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

SECTION 22. AUTHORITY. The Company and the City each hereby warrants that the party signing below has full and lawful authority to execute this Agreement on behalf of the Company and the City.

SECTION 23. CONDITIONS.

- 23.1 This Agreement is specifically subject to, and conditioned upon, the Company satisfying all the schedule and deadline requirements set forth above, and specifically if the conditions in Section 4 are not met the Agreement is null and void.

IN WITNESS WHEREOF, the City and Olive Garden Holdings, LLC (dba The Olive Garden Italian Restaurant) have executed this Amended Agreement as of the date first written above.

CITY OF BRIGHTON



By: \_\_\_\_\_  
Gregory Mills, Mayor

ATTEST:

\_\_\_\_\_  
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Alicia Calderón, City Attorney



Olive Garden Holdings, LLC (d.b.a. The Olive Garden Italian Restaurant), a Florida Corporation

By: A. Simmons  
Angela Simmons, Senior Vice President, Corporate Tax

STATE OF FLORIDA)  
COUNTY OF Florida ) ss.

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of June, 2024, by Olive Garden Holdings, LLC (d.b.a. The Olive Garden Italian Restaurant).

WITNESS my hand and official seal.

My Commission expires: 7/28/2026



Jeanette Rivera  
Notary Public