



**City of Rowlett**  
**Official Copy**  
**Resolution: RES-078-08**

4000 Main Street  
P.O. Box 99  
Rowlett, TX 75030-0099  
www.rowlett.com

**File Number: 2008-295**

**Enactment Number: RES-078-08**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH DENISIO MALO FOR A TEN THOUSAND SQUARE FOOT BUILDING; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Denisio Malo (hereinafter, "Developer") desires to construct a business and operate a business within the City of Rowlett (hereinafter, "City"); and,

**WHEREAS**, Developer has requested an Economic Development Incentive to defray a portion of the cost to be incurred as a consequence of developing the premises and locating within the City; and

**WHEREAS**, after consideration, the City Council has determined it to be in the best interest of the City to grant the request of the Developer and enter into an economic development incentive by agreement with Developer; and,

**WHEREAS**, the City has determined that a program for economic development requires that an incentive package for development is an important inducement to locate this business development; and

**WHEREAS**, such program provides an enhancement to the non-residential economic development of the community; and

**WHEREAS**, the attraction of new and the expansion of existing businesses within the City will promote economic development, stimulate commercial activity, provide additional jobs and employment opportunities for the citizens of the City, generate additional tax revenue, and enhance the tax base and economic vitality of the City.

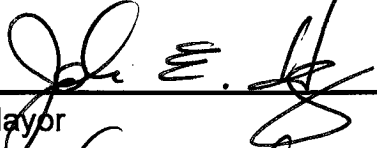
**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:**

**Section 1:** That the City Council hereby authorizes the City Manager to execute the Economic Development Incentive Agreement by and between Denisio Malo and the City of Rowlett, which is attached and incorporated herein by reference as Exhibit "A", after approval of the City Attorney.


**Section 2:** This resolution shall become effective immediately upon its passage.

At a meeting of the City Council on 8/5/2008, a motion was made by Councilmember Rushing, seconded by Councilmember Jackson, that this Resolution be adopted. The motion passed by the following vote:

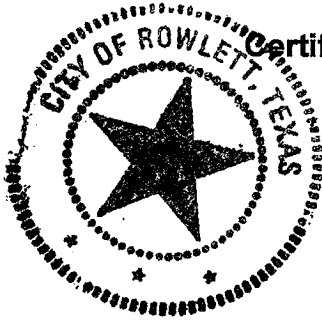
**Ayes:** 7 Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Phillips, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

Approved by   
Mayor

Date 8-6-08

Approved to Form by   
City Attorney

Date 8/7/08



Certified by   
City Secretary

Date 8-7-08

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

This Economic Development Incentive Agreement ("City") is made by and between the City of Rowlett, Texas ("City"), and Denisio Malo ("Owner"), acting individually or by and through their respective authorized officers.

**WITNESSETH:**

**WHEREAS**, the enhancement of the local economy is in the best interest of the citizens of the City; and

**WHEREAS**, economic development incentives encourage businesses and companies to locate or expand operations in the City; and

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

**WHEREAS**, the City is authorized pursuant to Section 380, Texas Local Government Code to provide economic development incentives; and

**WHEREAS**, Owner owns property located on Lakeview Parkway in Rowlett, Texas, and being further described in Exhibit "A", attached hereto and incorporated herein (the "Premises"); and.

**WHEREAS**, Owner intends to construct on the Premises an expansion of an existing restaurant facility and a shopping center of approximately 10,000 square feet in size, (the "Improvements"); and

**WHEREAS**, Owner has advised the City that a contributing factor that would induce Owner to construct the Improvements would be an agreement by the City to provide an economic development incentive to Owner to defray a portion of the cost to be incurred as a consequence of developing the Premises and locating within the City; and

**WHEREAS**, the City has found and determined that making a conditional economic development incentive grant to Owner in accordance with this City will further the objectives of the City and will benefit the City and its inhabitants; and

**WHEREAS**, the City and Owner recognize that said Premises require adequate infrastructure improvements to enhance and accelerate the development of the same;

**NOW THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE I**

**Term**

1. This Agreement shall commence on the date of execution stated hereinbelow and continue until all conditions precedent and subsequent have been performed as provided herein.

**ARTICLE II**

**Economic Development Grant**

2. Subject to Owner's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the following economic development grant, subject to the following terms and conditions:

- A. City agrees to provide to Owner an economic incentive grant equivalent to the street, water and sewer impact fees, in a total amount not to exceed Thirty-Four Thousand Seven Hundred Forty-Five and no/100 Dollars (\$34,745.00), which shall be payable at the time or within thirty (30) days after the street, water and sewer impact fees are paid by Owner.
- B. In addition to the grant authorized by subsection A of this section, the City agrees to provide to Owner an additional economic incentive grant equivalent to fifty percent (50%) of the increase in taxes attributable to the Improvements and the Premises for a period of four (4) consecutive calendar years commencing with the first tax year following the tax year in which the completion of construction of the Improvements occurs. If no increase in ad valorem taxes occurs, then no grant funds shall be due and payable by City.

For the purposes of the foregoing, the grant authorized herein shall be equal to but shall not exceed fifty percent (50%) of the increase in ad valorem real and personal property taxes attributable to the Premises and Improvements from the year in which this Agreement is executed as compared to each of the four consecutive calendar years following the completion of construction of the Improvements.

Notwithstanding, the grant authorized by this subsection shall be limited to and shall not exceed the sum of Five Thousand Six Hundred and Three and 79/100 Dollars (5,603.79) per year. This grant shall be due and payable to Owner within thirty (30) days following the date on which Owner remits ad valorem taxes to City.

- C. *Timely Completion of Construction.* The amounts set forth in subsections A and B of this section are conditioned that Owner will complete construction of the Improvements, and will have been issued a certificate of occupancy for the Improvements, no later than Twelve (12) months after the effective date of this Agreement, 2008, subject to events of force majeure, defined as a 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, adverse weather, government or de facto governmental action or inaction (unless caused by acts or omissions of such party), fires, explosions or floods, strikes, slowdowns or work stoppages.
- D. *Conditions of Grant.* The City's obligation to provide the Grant, or any part thereof, shall be and is hereby expressly conditioned on the commencement and completion of construction set forth in subsection C of this section, and on each and all of the following conditions:
- (i) Owner shall not engage in or commit an Event of Bankruptcy or Insolvency, defined as the dissolution or termination of Owner's or a successor in interest to the Premises existence as an on-going business, insolvency, appointment of a receiver for any part of a party's property and such appointment is not terminated within one hundred eighty (180) 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 one hundred eighty (180) days after the filing thereof;
  - (ii) Owner or Owner's approved assignee shall timely and promptly pay ad valorem taxes to the City, subject to and reserving Owner's right to protest the appraised value of the Premises or Improvements;
  - (iii) Owner or Owner's approved assignee shall timely and promptly pay to City any fees, charges, or assessments associated with the Premises or Improvements;
  - (iv) Owner and any approved assignee shall not pledge or in any way encumber any of the City's obligations under this Agreement in favor of any commercial lender and/or similar financial institution;
  - (v) Owner shall have expended not less than \$1,500,000 for the design, installation and construction of the Improvements;
  - (vi) Owner shall continuously own and occupy the Premises and Improvements for a period of one (1) year following the completion of construction; and

- (vii) Owner or its approved assignee, together with any tenants or occupants of the Improvements, shall employ, on a continuous and full-time basis at least 25 employees.
  
- E. *Grant Limitations.* Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Owner or an approved assignee.

**ARTICLE III  
Termination and Recapture**

- 3. This Agreement may be terminated for any of the following reasons:
  - A. by mutual written agreement of the parties;
  - B. by the City if Owner or an approved assignee fails to meet and satisfy any condition set forth in Section 2, subsection D, of this Agreement, or by the City or Owner, respectively, 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 by the non-breaching party;
  - C. by the City if any taxes, fees or charges owed to the City, other than those specifically identified and waived herein, the County of Dallas, or the State of Texas by Owner or an approved assignee shall have become delinquent (provided, however, Owner retains the right to timely and properly protest and contest such taxes or fees);
  - D. by the City if Owner or an approved assignee suffers an Event of Bankruptcy or Insolvency;
  - E. by the City or by Owner, respectively, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid or illegal;
  - F. by the City if insufficient funding is available in any future fiscal year to provide the grant, or any portion thereof, contemplated herein. In such event, the City shall give Owner not less than thirty (30) days notice of its intent to terminate.

In the event Owner or an approved assignee fails to meet any of the conditions of this Agreement, or if this Agreement is terminated by the City under subsections B, C, or D

of this section, then City shall give Owner or its approved assignee written notice of such failure, and if Owner or its approved assignee has not cured such failure within thirty (30) days after receipt of such written notice, this Agreement may be terminated by the City without further notice. In such event, the City shall have no obligation to fund the Grant (or waive the fees); if all or any portion of the Grant has been paid to Owner or an approved assignee, or if any fees have been waived, then Owner and its approved assignee shall, immediately upon notice, refund all amounts previously paid or waived. The foregoing obligation to refund shall be joint and several between and among Owner and its approved assignee. In the event of termination for other reasons, prior to payment of the Grant, the obligation of the City to fund said Grant (or any remaining portion thereof) shall cease immediately.

**ARTICLE IV  
MISCELLANEOUS**

**Other Economic Incentives**

4. Nothing contained herein shall be construed to preclude or create any right, title or interest in any further economic incentive, tax abatement, or development grant.

**No Conflicts of Interest**

5. The City represents and warrants that the Premises or any adjacent property upon which the Improvements is to be located is not owned by any officer or employee of the City.

**Assignment and Binding Agreement**

6. Owner shall not assign this Agreement without the prior written approval of the City, which approval shall not unreasonably be withheld. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto.

**Limitation on Liability**

7. It is understood and agreed between the parties that Owner, in the development of the Improvements and satisfying the conditions of this Agreement, is acting independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. Owner agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever arising out of its respective obligations (but not the obligations of the City or other party) under this Agreement.

8. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City and its past, present and future officers, elected officials, employees and agents do not assume any

responsibilities or liabilities to any third party in connection with the development of the Improvements or the design, construction or operation of the Improvements. In addition, Owner acknowledges and agrees that there shall be no recourse to any of the aforesaid parties, who shall incur no liability in respect of any claims based upon or relating to this Agreement.

**Authorization**

9. This Agreement was authorized by the City Council, authorizing the undersigned to execute this Agreement on behalf of the City.

10. Owner represents that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement.

**Notice**

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

If intended for Owner, to:

If intended for City, to:

City of Rowlett, Texas  
Attn: City Manager  
4000 Main Street  
P.O. Box 99  
Rowlett, Texas 75030-0099

**Entire Agreement**

12. 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 may be provided in the Exhibits attached hereto.

**Governing Law**

13. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas.

**Amendment**



14. This Agreement may be amended by the mutual written agreement of the parties.

**Legal Construction**

15. 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 the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

16. The provisions of this Agreement are hereby declared covenants running with the Premises and are fully binding on all successors, heirs, and assigns of Owner who acquires any right, title, or interest in or to the Premises or any part thereof. Any person who acquires 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 with respect to the right, title or interest in such Premises.

**RECITALS**

17. The recitals to this Agreement are incorporated herein.

EXECUTED in duplicate originals on this 13<sup>th</sup> day of August, 2008.

CITY OF ROWLETT, TEXAS

By: [Signature]  
CITY MANAGER

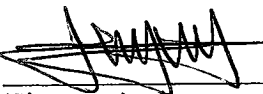
ATTEST:

By: [Signature]  
CITY SECRETARY

APPROVED AS TO FORM:  
By: [Signature]  
CITY ATTORNEY

EXECUTED in duplicate originals this the 13<sup>th</sup> day of August, 2008.

**OWNER:**

By:  \_\_\_\_\_  
(Signature)

DENISIO MAIO  
(Type/Print Name and Title)

CITY'S ACKNOWLEDGMENT

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 13<sup>th</sup> day of August, 2008, by George Harris, Interim City Manager of the City of Rowlett, Texas, a Texas municipality, on behalf of said municipality.

Carrie Lashell Wilson  
Notary Public, State of Texas

My Commission Expires:

February 1, 2012



OWNER'S ACKNOWLEDGMENT

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 16 day of October, 2008, by Denisio Malo.



B. Denise Hayes  
Notary Public, State of Texas

My Commission expires:

2011