

AGREEMENT

The Agreement is entered into by the Coweta Industrial Development Authority (“Authority”), an Oklahoma Trust Authority, and the City of Coweta, Oklahoma (“City”), an Oklahoma Municipality, jointly (“Coweta”), and 918 Holdings, LLC, an Oklahoma Limited Liability Company (“Company”).

RECITALS

1. The Company intends to develop and use real property located within the City of Coweta, Wagoner County, State of Oklahoma (“Property”), more particularly described as follows:

Lot 11, Block 52, New Coweta City,

2. The Property has the proper zoning for the proposed use.
3. The Company desires to operate and maintain a new dining establishment in downtown Coweta located at 124 S Broadway Avenue, Coweta, Oklahoma (“Facility”).
4. Coweta, by approval of this agreement, has made a legislative decision that a public purpose exists that supports the award of a sales tax rebate to Company. The benefits to the public include, but are not limited to:
 - (a) The redevelopment of property that has remained underutilized for a number of years, without significant economic activity;
 - (b) The creation of new jobs, with employment opportunities for the residents of the City;
 - (c) The creation of additional sales tax opportunities, both as a direct result of the development and indirectly to the surrounding businesses that will benefit from the increased economic activity in the area;

- (d) Additional dining and entertainment opportunities for the residents of the City for the purpose of improving the quality of life of the residents of the City;
- (e) The City by approval of this agreement finds that there is a direct relationship between the amount of sales taxes generated by the Company and the economic benefit, jobs benefit, and quality of life benefit realized by the residents of the City.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth, Coweta and the Company agree as follows:

- A. City agrees that the Property may be used for the operation and maintenance of a dining facility. Company agrees that during the term hereof the Property will be used solely for the operation and maintenance of a dining facility.
- B. Sales Tax Contribution. For a period commencing on the Sales Tax Contribution Commencement Date (as hereinafter defined), and continuing until the expiration of the Term of this Agreement, (as hereinafter defined), the Authority shall pay to the Company an amount equal to one and one-half cent (\$0.015) from every three cents (\$0.03) that the City receives in sales tax generated at the above-mentioned Facility location (the "Sales Tax Contribution"). The sole and only funding for this Agreement shall be the Sales Tax Contribution and will be contingent upon the annual appropriation of budgetary funding by the Coweta City Council during the Term of the Agreement. The Company will utilize the Sales Tax Contribution monies solely for purposes as are authorized under the Local Development Act, 62 O.S. Section 850 et seq. City shall be provided reasonable access to the Property and afforded an opportunity to inspect same as well as the operations thereon to ensure that the uses of the property are consistent with the general purposes of the Sales Tax Contributions.

Provided, the Sales Tax Contribution:

- (1) Shall apply solely to sales taxes generated at the Facility
- (2) Shall commence when the City first receives sales tax from the Company doing business on the Property after the business is opened (the "Sales Tax Contribution Commencement Date").
- (3) Shall be paid by the City to the Company within thirty (30) days of each receipt by the City of its share of the sales tax paid to the State of Oklahoma by persons doing business on the Property after the Sales Tax Contribution Commencement Date.
- (4) Shall not be reduced or offset by the City at any time but will be subject to annual budgetary appropriation by the Coweta City Council.
- (5) Shall continue to be one and one-half cent (\$0.015) as stated above without regard to whether the total City sales tax is increased or decreased during the term hereof.
- (6) Shall cease at the earlier of the end of a Term of five (5) years, or whenever Company has been reimbursed a total of one hundred fifty thousand dollars (\$150,000), whichever shall occur first.

Records. The City shall maintain accurate records of all sales tax revenue received by the City directly for sales made by Company at the Facility (the "Sales Tax Revenue"), as defined by the Vendor number assigned by the Oklahoma Tax Commission and confirmed by actual sales tax payments by the Company. The City shall provide the Company with a written summary of the Sales Tax Revenue concurrently with delivery of payment from the City to the Company required by this Agreement. During normal business hours of the City, the Company shall have the right to inspect any and all such records, unless restricted by the Oklahoma Tax Commission, and to obtain an accounting and/or audit of such records, at the sole cost of the Company. It shall be the responsibility of the Company to provide proof of sales tax payments to the City to ensure the rebate is paid correctly.

C. Miscellaneous.

- (1) Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature

pages hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Agreement to the terms hereof.

- (2) This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement.
- (3) Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.
- (4) If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (5) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.
- (6) Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.
- (7) Any communication, notice or demand of any kind whatsoever which either party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopy (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

City of Coweta
ATTN: Roger Kolman, City Manager
P.O. Box 850
Coweta, OK 74429-0850

918 Holdings, LLC
ATTN: Clint McKinney
P.O. Box 1827
Broken Arrow, OK 74012

Any party may change its address for notice by written notice given to the other in the manner provided in this Section. Any such communication, notice or demand shall be deemed to have been duly given or served on

the date personally served, if by personal service, one (1) day after the date of confirmed dispatch, if by electronic communication on a business day before 5:00 p.m., or three (3) days after being placed in the U.S. Mail, if mailed.

- (8) The City and the Company agree to cooperate with each other and act in good faith and with fair dealing throughout the effective term of this Agreement. The parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.
- (9) The making, execution and delivery of this Agreement by the parties hereto have been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.
- (10) Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement. PROVIDED, IT IS SPECIFICALLY UNDERSTOOD THAT IF ANY RIGHT OF BENEFIT GRANTED TO THE COMPANY BY THIS AGREEMENT HEREAFTER SHALL BE NULLIFIED BY ANY SUBSEQUENT ACTION OF THE CITY, A COURT OF LAW, OR ANY OTHER LAWFUL AUTHORITY, THE COMPANY SHALL HAVE THE RIGHT, AT ITS SOLE AND ABSOLUTE DISCRETION, TO TERMINATE THIS AGREEMENT. THE COMPANY AGREES THAT, IF IT TERMINATES THE AGREEMENT AS AFORESAID, IT WILL DELIVER WRITTEN NOTICE OF SUCH TERMINATION TO THE CITY FORTHWITH AFTER THE COMPANY DECIDES TO TERMINATE THE AGREEMENT.
- (11) The language in all parts of this Agreement shall be in all cases construed simply according to its full meaning and not strictly for or against any of the parties hereto. This Agreement shall not be construed for or against either party on the basis of which party drafted the Agreement or any provision therein.
- (12) Paragraph headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to “paragraphs” or “¶” are to paragraphs of this Agreement, unless otherwise specifically provided.
- (13) This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns as long as any successor company is an entity whose primary activity is taxable retail sales. Neither this Agreement nor any of the rights or obligations of the parties hereunder shall be transferred or assigned by any party without the prior written consent of the non-assigning party; which consent shall not be unreasonably withheld or delayed.

(14) Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of the parties with respect to the obligations as set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the 9th day of September, 2019.

918 HOLDINGS, LLC

By: _____
Clint McKinney, Managing Member

THE CITY OF COWETA, OKLAHOMA,

Evette Morris, Mayor

THE COWETA INDUSTRIAL DEV. AUTH.,

Evette Morris, Chair

ATTEST:

Julie Casteen, City Clerk

APPROVED AS TO FORM:

Ronald D. Cates, City Attorney