

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into effective as of the 11th day of June, 2019 (the "Effective Date"), by and among the City of Grand Island, Nebraska ("City"), the Grand Island Economic Development Corporation ("GIAEDC") and Zabuni Specialty Coffee Auction LLC, a Nebraska limited liability company ("Company") (City, GIAEDC and Company, each a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, on April 15, 2019, Company filed an Application for Economic Development Incentives (the "Application") with City and GIAEDC;

WHEREAS, Company is starting operations in Grand Island;

WHEREAS, the Company agrees to employ at least ten (10) full-time equivalent employees in Grand Island by the third (3rd) anniversary of the Effective Date;

WHEREAS, City and GIAEDC find Company derives its principal source of income from the sale of services in interstate commerce and is a qualifying business under City's Economic Development Program, that Company's project qualifies for economic development incentives under the Program, that Company's project will be of substantial economic benefit to the people of Grand Island and the surrounding area, and the economic development incentive plan set forth in this Agreement contributes to the fulfillment of the major objectives of City's Economic Development Plan;

WHEREAS, City and GIAEDC are willing to provide Company with up to \$25,000 in job training assistance, up to \$50,000 in job creation incentives, and up to \$25,000 in infrastructure support at the times and upon the fulfillment of the conditions set forth in this Agreement provided that Company complies with the terms of this Agreement; and

WHEREAS, in furtherance of the foregoing recitals, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the respective meanings ascribed to them in this Section 1:

(a) "Employment Certificate" shall mean a certificate for the defined period containing the sworn statement of a duly authorized representative of Company specifically setting forth compliance with the terms of this Agreement. The Employment Certificate shall contain the following information and adhere to the following terms: (i) the total number of hours which FTE's worked and total gross compensation received by FTE's for hours worked at Company's facilities in Grand Island during the twelve (12) successive calendar months immediately preceding the date of the Employment Certificate; and (ii) the hourly rate for all FTE's which shall meet or exceed the Minimum Hourly Rate. Company agrees that upon receipt of written notice pursuant to the terms of this Agreement, Company shall allow the City Administrator or his designee to

personally inspect Company's employment records as confirmation of the statements contained in the Employment Certificate.

(b) "Full-Time Equivalents" or "FTE's" shall mean persons currently employed by Company and persons hired by Company as part of the expansion of its operations to Grand Island as detailed in the recitals to this Agreement. The total number of FTE's shall be determined by dividing the total number of hours Company employees worked at its facilities located in Grand Island by two thousand eighty (2,080).

(c) "Minimum Hourly Rate" shall mean a minimum hourly rate of \$18.00 per hour for each FTE employed as part of Company's expansion of its operations in Grand Island. The hourly rate shall be determined by dividing the total wages and salaries paid to FTE's by two thousand eighty (2,080).

2. Employment Requirements. Company shall meet each of the following employment requirements:

(a) Company shall have a minimum of one (1) FTE at its facilities in Grand Island being compensated at the Minimum Hourly Rate as of the Effective Date;

(b) Company shall have a minimum of three (3) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate as of the first (1st) anniversary of the Effective Date;

(c) Company shall have a minimum of six (6) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate as of the second (2nd) anniversary of the Effective Date; and

(d) Company shall have a minimum of ten (10) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate as of the third (3rd) anniversary of the Effective Date.

3. Disbursement of LB 840 Funds for Job Training. Disbursement of the economic incentive funds for job training shall be paid to Company by City in accordance with the following schedule:

(a) A disbursement for training FTE's in the amount of Eight Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$8,333.34) shall be paid by City to Company within sixty (60) days of the approval this Agreement by the City Council.

(b) A disbursement for training FTE's in the amount of Eight Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$8,333.33) shall be paid by City to Company within thirty (30) days of the first (1st) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to City and GIAEDC evidencing that Company has at least three (1) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(c) A disbursement for training FTE's in the amount of Eight Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$8,333.33) shall be paid by City to Company within thirty (30) days of the second (2nd) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to City and GIAEDC evidencing that

Company has at least six (6) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(d) The maximum amount City shall disburse to Company for job training shall be Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

4. Disbursement of LB 840 Funds for Job Creation. Company shall be eligible for disbursements of up to Five Thousand and no/100 Dollars (\$5,000.00) per FTE for up to ten (10) FTE's for a total disbursement of up to Fifty Thousand and No/100 Dollars (\$50,000.00). Disbursement of the economic incentive funds for job creation shall be paid to Company by City in accordance with the following schedule:

(a) A disbursement of Fifteen Thousand and No/100 Dollars (\$15,000.00) shall be paid by City to Company within thirty (30) days of the first (1st) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to City and GIAEDC evidencing that Company has at least three (3) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(b) A disbursement of Fifteen Thousand and No/100 Dollars (\$15,000.00) shall be paid by City to Company within thirty (30) days of the second (2nd) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to City and GIAEDC evidencing that Company has at least six (6) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(c) A disbursement of Twenty Thousand and No/100 Dollars (\$20,000.00) incentives shall be paid by City to Company within thirty (30) days of the Third (3rd) anniversary of the Effective Date provided that Company has delivered an Employment Certificate to City and GIAEDC evidencing that Company has at least ten (10) FTE's at its facilities in Grand Island being compensated at the Minimum Hourly Rate.

(d) The maximum amount City shall disburse to Company for job creation shall be Fifty Thousand and No/100 Dollars (\$50,000.00).

5. Disbursement of LB 840 Funds for Infrastructure. Disbursement of the economic incentive funds for infrastructure shall be paid to Company by City in accordance with the following schedule:

(a) A disbursement for infrastructure in the amount of Eight Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$8,333.34) shall be paid by City to Company within thirty (30) days of the completion of a public coffee auction to be held in person or online at 220 North Walnut Street Grand Island, NE with a minimum sale of 2,000 Kilograms of green bean unroasted coffee imported from Kenya being sold at said auction to parties not related to, or affiliated with, Company (the "First Sale"). Company shall provide evidence of the First Sale that is acceptable to GIAEDC and City as required pursuant to Section 5(e) prior to the disbursement of any funds pursuant to this Section 5(a);

(b) A disbursement for infrastructure in the amount of Eight Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$8,333.34) shall be paid by City to Company within thirty (30) days of the first (1st) anniversary of the Effective Date;

(c) A disbursement for infrastructure in the amount of Eight Thousand Three Hundred Thirty-Three and 34/100 Dollars (\$8,333.34) shall be paid by City to Company within thirty (30) days of the second (2nd) anniversary of the Effective Date;

(d) The maximum amount City shall disburse to Company for infrastructure shall be Twenty-Five Thousand and No/100 Dollars (\$25,000.00); and

(e) Within fifteen (15) days after the First Sale, Company agrees to provide City and GIAEDC (i) copies of auction sales receipts from parties not related to, or affiliated with, Company, evidencing a minimum sale of 2,000 Kilograms of green bean unroasted coffee imported from Kenya, and (ii) evidence that said coffee has been imported from Kenya.

6. Company's Representations and Warranties. Company represents and warrants to City and GIAEDC as follows:

(a) Organization, Standing and Power. Company is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Nebraska and has the legal power to carry on its business as it is now being conducted.

(b) Authority. The execution, delivery and performance of this Agreement by Company has been duly and validly authorized and approved by all necessary legal action on the part of Company.

(c) Binding Agreement. This Agreement, when executed and delivered, will constitute the legal, valid and legally binding agreement of Company, enforceable against Company in accordance with its terms.

(d) No Conflict with Other Instruments or Agreements. The execution, delivery and performance of this Agreement by Company will not result in a breach or violation of, or constitute a default under any agreement to which Company is bound, and will not be in violation of any statute, judgment, order, rule or regulation of any court, or any federal, state or other regulatory authority or governmental body having jurisdiction over Company in effect as of the Effective Date.

(e) No Brokers. Company has not retained or agreed to compensate any broker or finder in connection with the transactions contemplated by this Agreement.

(f) Operations. During the term of this Agreement, Company shall maintain operations in Grand Island, Nebraska.

In the event that Company breaches any of the foregoing representations and warranties, all amounts distributed by City to Company pursuant to this Agreement shall immediately become due and owing by Company to City and if unpaid shall accrue interest at the rate of eight percent (8%) per annum until such amounts are repaid in full.

7. Company's Obligation to Repay Funds. The Parties acknowledge and agree that the funds to be provided by City to Company pursuant to this Agreement are being provided in the form of an economic development loan and are subject to repayment in accordance with the terms and conditions of this Agreement if Company fails to perform its obligations under this Agreement. The Parties further acknowledge and agree that City shall forgive the entire economic development loan disbursed to Company representing a total of One Hundred Thousand and No/100 Dollars (\$100,000.00) upon Company meeting the following conditions:

(a) Company shall have complied with all of the terms and provisions of Sections 2 through 7 of this Agreement in all respects; and

(b) If Company remains in compliance with all of the terms and provisions of Sections 2 through 7 of this Agreement in all respects, the economic development loan will be forgiven pursuant to the following schedule:

(i) On the first anniversary of the Effective Date, Sixteen Thousand Six Hundred Sixty-Six and 68/100 Dollars (\$16,666.68) of the economic development loan shall be forgiven;

(ii) On the second anniversary of the Effective Date, Thirty-One Thousand Six Hundred Sixty-Six and 66/100 Dollars (\$31,666.66) of the economic development loan shall be forgiven; and

(iii) On the third anniversary of the Effective Date, Thirty-One Thousand Six Hundred Sixty-Six and 66/100 Dollars (\$31,666.66) of the economic development loan shall be forgiven.

iv) On the fourth anniversary of the Effective Date, Twenty Thousand and No/100 Dollars (\$20,000.00) of the economic development loan shall be forgiven.

8. Default. In the event that Company fails to comply with any of the terms of this Agreement, City may declare Company to be in breach. Any such declaration shall be in writing and sent by US Mail or courier to Company at its last known address. In the event that City declares Company to be in breach, City may immediately terminate this Agreement by providing written notice of termination sent by US Mail or courier to Company at its last known address whereupon all amounts distributed by City to Company pursuant to this Agreement shall immediately become due and owing by Company to City and if unpaid shall accrue interest at the rate of eight percent (8%) per annum until such amounts are repaid in full.

9. Actions after Effective Date. From time to time after the Effective Date, without further consideration, each of the Parties will execute and deliver such documents and instruments as any other Party shall reasonably request to give full effect to the transactions contemplated by this Agreement.

10. Term. This Agreement (and all representations, covenants, agreements, obligations and warranties of Company, City and GIAEDC contained in this Agreement), shall remain in full force and effect until the earlier of the date that (a) the entire economic development loan has been forgiven pursuant to Section 7, or (b) Company has repaid all amounts provided to Company pursuant to this Agreement (in the event Company breaches its obligations under this Agreement) (such date, the "Termination Date"). From and after the Termination Date, this Agreement shall be of no further force or effect and no Party shall have any further obligations pursuant to this Agreement.

11. Amendment. No amendment or modification of this Agreement shall be binding on any Party unless the same shall be in writing and signed by all Parties.

12. Communication. Company agrees to inform City and GIAEDC of any changes in Company's address, telephone number, email address or leadership within three (3) business days of such changes. Company also agrees to fully respond within fifteen (15) calendar days

to any request for information from City and/or GIAEDC related to Company's compliance with the terms of this Agreement. All responses to inquiries shall be in writing and provided to City and GIAEDC at the following addresses:

Grand Island City Administrator
100 East First Street
P.O. Box 1968
Grand Island, NE 68802-1968
Cityadministrator@grand-island.com

Grand Island Area Economic Development Corporation
123 North Locust Street, Suite 201B
P.O. Box 1151
Grand Island, NE 68802
mberlie@grandisland.org

13. Indemnification. Company agrees to indemnify, defend and hold City, GIAEDC and their employees, officers, directors, agents, attorneys, affiliates and their respective successors and assigns (collectively, the "Indemnified Parties") harmless from and against any and all loss, liability, obligation, damage, penalty, judgment, claim, deficiency and expense (including interest, penalties, attorneys' fees and amounts paid in settlement) to which the Indemnified Parties may become subject arising out of or based upon a breach or default by Company of this Agreement.

14. Expenses. The Parties shall all pay their respective expenses incident to the preparation, execution and consummation of this Agreement.

15. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and assigns (including, without limitation, any purchaser of, or successor to, Company whether by purchase, merger, consolidation, reorganization, liquidation or any other type of transaction).

16. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

17. Non-Waiver. Waiver of or acquiescence by City and/or GIAEDC in any default by Company, or any failure of City and/or GIAEDC to insist upon strict performance by Company of any warranties, agreements or other obligations contained in this Agreement shall not constitute a waiver of any subsequent or other default, failure or waiver of strict performance, whether similar or dissimilar.

18. Relationship of Parties. The Parties have entered into this Agreement solely for the purposes set forth in this Agreement. Nothing contained in this Agreement shall be construed to create or imply any (a) partnership or joint venture by or among of the Parties, or (b) any principal and agency relationship by or among the Parties.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Nebraska, without giving effect to its conflict of laws principles.

20. Entire Agreement. This Agreement and the documents referred to in this Agreement constitute the entire agreement of the Parties respecting the subject matter contained in this Agreement and supersede any prior offers, understandings, agreements or representations by and between the Parties, written or oral, which may have related to the subject matter of this Agreement in any way.

21. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but which together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have signed this Agreement effective as of the Effective Date.

Zabuni Specialty Coffee Auction LLC, a Nebraska
limited liability company

By: *Cora Njirũgũna*
Its: *owner/manager*

City of Grand Island, Nebraska

By: *Roger B. Hunk*
Its: *Mayor*

Grand Island Area Economic Development
Corporation

By: *Dennis Ryan*
Its: *President*

Stacy R. Dankof
Asst. City Attorney