

## ECONOMIC DEVELOPMENT AGREEMENT

**THIS ECONOMIC DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into as of \_\_\_\_\_, 2016, by and between the **Seabrook Economic Development Corporation**, situated in Harris County, Texas ("SEDC"), and **Merlyon Restaurant Group Incorporated, currently doing business as Merlion Thai Restaurant and Lounge on 4<sup>th</sup> Street**, located currently at 1301 4th Street, Seabrook, TX 77586, a Texas corporation, with registered office located at 1301 4th Street, Seabrook, TX 77586, and registered agent Brooke Amber Villanueva at 5315 Twin Cedar Lane, Dayton, TX 77535, ("Owner" or "Developer"), the SEDC and Owner herein collectively referred to herein as the "Parties."

### **WITNESSETH:**

**WHEREAS**, Developer/Owner proposes to enter into an agreement to construct a commercial building consisting of a 4,300 square foot restaurant to relocate its existing restaurant owned by Merlyon Restaurant Group, Incorporated, currently located at 1301 4th Street, Seabrook, TX 77586, Seabrook, Texas, operating under the name of Merlion Thai Restaurant and Lounge on 4<sup>th</sup> Street, and pursuant to this Agreement to be relocated to \_\_\_\_\_ on \_\_\_\_\_[short legal description] and which location is more particularly described and depicted in Exhibit "A" and made a part hereof, hereinafter referred to as ("Project Facilities"); and

**WHEREAS**, Developer proposes to erect/construct the new commercial building(s), consisting of at least 4,300 square feet, with exterior build-out, including wooden decks, open patio, landscaping/buffer, parking, and a dedicated public easement to allow for its construction of a sidewalk, (as depicted in the attached final Site Plan, a true and correct copy of which is attached hereto and incorporated with the exhibits included in Exhibit "B"), the total estimated cost of which is \$\_\_\_\_\_, which upon completion of such construction, Developer proposes to

occupy and use as a full-service restaurant, collectively employing a minimum of \_\_\_\_\_ (\_\_\_) full and part time employees, (the "Project"); and

**WHEREAS**, Developer has applied to the SEDC for a business incentive grant to help defray a portion of the costs of construction referred to above, a copy of which application and related documents including project summary, budget, and related layout depictions, specifically including the final Site Plan (all such documents collectively referred to herein as the "Application") which are attached hereto and made a part hereof as Exhibit "B", which is incorporated by reference. The representations contained in the Application, as well as Owners representations before the SEDC are being specifically relied upon by the SEDC as true and correct in considering Owner's/Developer's Application for the Project; and

**WHEREAS**, Owner has proposed Project Facilities (that include relocation, acquisition, site improvements, construction, and related improvement costs), and submitted a Project Summary and budget to SEDC, estimated to total at least \$\_\_\_\_\_ for the Project Facilities and Project, as reflected in Exhibits "A" and "B", and has requested reimbursement from SEDC as an incentive for the Project Facilities/Project, for an amount not to exceed **\$111,852.50**, as determined by SEDC; and

**WHEREAS**, pursuant to the Texas Local Government Code, Chapters 501 and 505 together with related authority, Economic Development Corporations of municipalities are authorized to establish programs to promote the creation or retention of jobs and/or that promote or develop new or expanded business enterprises in the municipality; and

**WHEREAS**, in accordance with such enabling laws, SEDC has adopted "Economic Development Incentive Programs, as provided for in SEDC Resolution 2016-1," and related incentives (the "Program"); and

**WHEREAS**, SEDC hereby finds and determines that Developer's/Owner's proposed Project, together with the proposed Project Facilities, as set forth in the Application, the final Site Plan and related documents provided, meets the minimum eligibility requirements for an economic incentive grant pursuant to the Program; and

**WHEREAS**, SEDC hereby finds and determines that the Project, as depicted by Developer/Owner in the Application and related correspondence, encourages the creation or retention of jobs and/or promotes or develops new or expanded business enterprises in the municipality and can be reasonably anticipated to act as a catalyst for further economic development, particularly tourism and revitalization of Old Seabrook in the City of Seabrook; and

**WHEREAS**, SEDC, in reliance upon Developer's/Owner's representations desires to provide an economic development incentive grant under the Program to induce Developer/Owner to proceed with the implementation of the Project; now therefore,

**FOR AND IN CONSIDERATION** of the mutual promises, covenants, and agreements herein, the Parties agree as follows:

**I. Inducement by SEDC.** Conditioned upon: the findings of the above preamble being true and correct; Developer's/Owner's representations as being true and correct; compliance with the guidelines of the Program, City Code of Ordinances, and this Agreement; approval by the Seabrook City Council; completion of the Project/Project Facilities in accordance with the final Site Plan; and final approval of completion and determination of compliance by SEDC; SEDC will provide, in the form of a reimbursement to Developer/Owner, an economic incentive grant ("Grant"), for the Project Facilities and Project, a total amount not to exceed **\$111,852.50** as provided hereafter:

(a) Reimbursement of the amount of EDC tax paid by Owner, not to exceed a term of 10 years or an amount exceeding **\$40,000** of the total SEDC

reimbursement payments, (whichever comes first), which shall be payable by SEDC to Owner within 30 days after Owner's payment of same to City;

(b) Reimbursement of impact fees/administrative costs paid by Owner, in an amount not to exceed **\$33,252.50**, which shall be payable by SEDC to Owner within 30 days after Owner payment of same to City; and

(c) Conditioned upon City approval of final Site Plan, (which shall include specific detail of parking and public sidewalks), and required recordation of public easement acceptable to City, (with applicable lender consent and prior approval of easement by City), SEDC shall make payment in an amount not to exceed **\$38,600**, payable within thirty (30) days following filing and recordation of the subject public easement in compliance with the final Site Plan and Project Facilities.

**II. Performance by Developer.**

**A. Improvements to Project Facilities.** Developer/Owner shall provide for the construction and build-out of the Project Facilities/Project as set forth in the Application. Construction shall be substantially complete on or before **July 1, 2017**.

**B. Employment.** Owner/Developer, pursuant to the Project shall, within 30 days following the date of issuance of Grant funds, collectively employ not less than      full and part-time employees.

**III. Recapture for Default.** Grant funds provided hereunder by SEDC shall be contingent on compliance with the provisions of Sections I and II above. In the event of default on any of such requirements, and failure to completely cure any such default within thirty (30) days following written notice thereof by SEDC to Developer/Owner, Developer/Owner shall refund to SEDC the full amount of Grant funds provided hereunder.

Any required refund payment shall be remitted to SEDC within thirty (30) days following the expiration of the cure period set forth above, and any delinquent payment shall bear interest at the maximum rate allowed by law.

**IV. Jurisdiction.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action arising out

of this Agreement shall be exclusively in Harris County, Texas.

**V. Notices.** Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or such future addresses as may be designated in writing:

**If to Owner/Developer:**

Merlyon Restaurant Group, Incorporated  
Brooke Amber Villanueva, Authorized Agent/President  
5315 Twin Cedar Lane  
Dayton, TX 77535

**If to SEDC:**

City Manager  
City of Seabrook  
1700 First St.  
Seabrook , Texas 77586

Notice shall be deemed received upon actual receipt or upon refusal of receipt.

**VI. Assignment and Succession.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and assigns of the respective parties. All rights hereunder may be assigned by Developer/Owner without restriction to any wholly owned subsidiary or affiliate of Developer/Owner or other entity controlled by Developer/Owner or by a subsidiary or affiliate of Developer/Owner, provided that notice of each assignment shall be given in writing to SEDC, but no other assignment shall be effective without the SEDC's written approval and consent. Provided further, no assignment hereunder shall be effective without the written acknowledgment and acceptance by the assignee of the duties and obligations of Developer/Owner set forth in this Agreement. Such approval shall not be unreasonably withheld.

**VII. Time of Essence.** Time is of the essence of this Agreement. However, in the event the date specified or computed under this Agreement for the performance of an obligation by any party, or for the occurrence of any event

provided herein, shall be a Saturday, Sunday or "legal holiday" (defined for purposes hereof as any holiday observed by the City), then the date of such performance or occurrence shall automatically be extended to the next calendar day that is not a Saturday, Sunday or legal holiday.

**VIII. Modification/Entire Agreement Expressed.** No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated, and signed by the Parties. This Agreement constitutes the entire agreement between the parties. No party shall be bound by any term, conditions, statement, or representations, oral or written, not herein contained.

**IX. Severability.** If any term or provision of this Agreement is held to be illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby; and in lieu of such illegal, invalid, or unenforceable term or provision, there shall be added automatically to this Agreement, a legal, valid, or enforceable term or provision, as similar as possible to the term or provision declared illegal, invalid, or unenforceable.

**X. Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraph contained herein.

**XI. Operations.** It is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business in the Project Facilities. The SEDC and Developer/Owner acknowledge and agree that Developer/Owner may, at its sole discretion and at any time cease the operation of its business in the Project Facilities, and SEDC hereby waives any legal action for damages or for equitable relief which might be available because of such cessation of business activity by Developer/Owner *except for the recapture of Grant funds as specifically set forth in this Agreement.* Provided, however, if Developer/Owner fails to construct the improvements to the Project Facilities/Project as set forth herein, Developer/Owner agrees to reimburse SEDC, on demand for all

costs expended by SEDC or for which it is legally obligated to expend, as a result of its performance of this Agreement. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or other entity between SEDC and Developer/Owner, with regard to the Project, and SEDC shall have no right hereunder to control the operation of Developer/Owner or the Project. Provided, however, nothing contained herein shall be construed as waiving or limiting the power and authority of SEDC or the City of Seabrook to exercise its police powers, or exempt Developer/Owner from complying with lawfully adopted rules, regulations, ordinances, or laws of the State of Texas or SEDC.

**XII. Agreement Product of Negotiation.** The Parties agree that this Agreement is the product of negotiation, that each Party has been represented by counsel of their own choosing, that each has freely entered into this Agreement after consulting with their counsel, and that this Agreement contains the terms and conditions requested and required by each. This Agreement shall be construed as having been drafted by all Parties and no term or provision shall be construed either in favor of or against a party on the basis that a party did or did not authorize this Agreement.

**XIII. Limit Of Appropriation.** Prior to the execution of this Agreement, Owner/Developer has been advised by the SEDC and Owner/Developer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the SEDC shall have available as a condition for payment, only those sums as expressly provided for under this Agreement for this fiscal year to discharge any and all liabilities which may be incurred by the SEDC. The total compensation that Owner/Developer may become entitled to hereunder and the total sum that the SEDC shall become liable to pay to Owner/Developer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

The Parties specifically acknowledge that the funds allocated for payment to

Owner/Developer by SEDC are derived from sales tax revenues, and that SEDC has only estimated the anticipated tax revenues to be collected during the term of this Agreement in its budget for Fiscal Year 2015-16, and that no estimates have been made of tax revenues for future fiscal years. Owner/Developer further understands, acknowledges, and agrees that if the tax revenues actually collected in any fiscal year are estimated to be or are actually less than the estimated tax revenues anticipated to be collected during the term of this Agreement, SEDC shall be under no obligation to reimburse Owner/Developer for the amount set forth in Section I. Owner/Developer further acknowledges that this Agreement could be anticipated to extend into future fiscal years, and funds may not be available or budgeted in future fiscal years, and that any anticipation of extension may not be enforceable under the Constitution and laws of the State of Texas.

**XIV. Employment of Undocumented Workers.** Owner/Developer acknowledges prior notice provided by SEDC/City, that all Agreements related to the construction of the Project shall contain notifications required by Texas Govt. Code Section 2264, such as the following:

*During the term of this Agreement, the Owner/Developer agrees not to knowingly employ any undocumented workers as defined in Tex. Govt. Code Sec. 2264.001. If convicted of a violation under 8 U.S.C. § 1324a(f), the Owner/Developer shall repay the amount of the Grants/incentives and any other funds received by the Owner/Developer from the City as of the date of such violation not later than 120 days after the date the Owner/Developer is notified by the City of a violation of this section, plus interest from the date the Grant/incentive was paid to the Owner/Developer, at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial*

*lending rate. The payment of interest shall be as if it had been accruing from the date the Grants/incentives were paid to the Owner/Developer until the date the Grants/incentives are repaid to the City.*

IN WITNESS WHEREOF, and as authorized respectively by the SEDC, City Council of Seabrook and Seabrook Hospitality, LP, by and through their respective authorized agents, the parties have executed this Agreement effective the day and year first written above.

**SEABROOK ECONOMIC DEVELOPMENT CORPORATION**

\_\_\_\_\_  
BY: Paul Dunphey,  
Board President

DATE: \_\_\_\_\_, 2016

ATTEST:

\_\_\_\_\_  
Ernie Davis,  
Board Secretary

**MERLYON RESTAURANT GROUP, INCORPORATED**

\_\_\_\_\_  
Brooke Amber Villanueva  
Authorized Agent/President

DATE: \_\_\_\_\_, 2016

**CITY OF SEABROOK, TEXAS**

\_\_\_\_\_  
Glenn R. Royal  
Mayor

DATE: \_\_\_\_\_, 2016

ATTEST:

\_\_\_\_\_  
Robin Hicks, TRMC  
City Secretary