

THE STATE OF TEXAS §  
§  
COUNTY OF TARRANT §

**ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH  
GLADE 121, L.P.**

This Economic Development Program Grant Agreement ("Agreement") is made and entered into by and between GLADE 121, L.P. ("Grantee"), a Texas limited partnership, and the CITY OF EULESS (the "City"), a Texas home rule municipality organized and existing under the constitution and laws of the State of Texas, hereinafter referred to as ("Eules"), for the purposes and considerations stated below:

**Section 1. Authorization**

This Agreement is made pursuant to an Economic Development Program as authorized by TEX. LOCAL GOVERNMENT CODE, Chapter 380 (the "Act") and according to a program adopted by the City Council of the City to promote local economic development and to stimulate business and commercial activity in Eules.

**Section 2. Definitions**

- a) The Glade Parks Mixed Use Development, herein after referred to as "Development", is defined, described and governed by Planned Development, #07-02-PD (The PD) and approved by Ordinance No. 1812.
- b) "Maximum Program Amount" means the maximum amount of grant money to be paid by the City to Grantee, its successors or assigns. The Maximum Program Amount is \$32,000,000.
- c) "Sales and Use Tax Report" means the report received by the Texas State Comptroller from each business, or for the entire development located on the Property pursuant to Tax Code Section 321.3022 that shows the amount of Total Taxable Sales from such business or businesses.
- d) "Program" means 25 annual payments of economic development grant installments approved by the City Council pursuant to the Act and this Agreement.
- e) "Program Effective Date" means the date upon which Grantee begins participation in the Program following execution of this Agreement, as provided in Section 3 below.
- f) "Program Grant" means a grant of one half of the one per-cent general sales and use tax paid to and received by Eules from General Sales and Use Taxes from businesses located on the Property for a period of 25 years, to be paid by Eules

to the Grantee in 25 annual installments during the term of the Program, not to exceed a total amount of \$32,000,000.

- g) "Sales Tax" shall mean the one per-cent municipal general sales and use tax authorized by Section 321.101(b) of the Municipal Sales and Use Tax Act paid to and received by the City of Euless from businesses located on the Property.
- h) "Total Taxable Sales" means the total amount of all taxable sales and services as reported on the Sales and Use Tax Reports remitted to the Texas Comptroller of Public Accounts by businesses located on the Property.
- i) "Comptroller" shall mean the Texas Comptroller of Public Accounts.

### **Section 3. Term**

- a) This Agreement shall be effective as of the date of execution by both parties.
- b) The term of the Program will not exceed 25 consecutive years after the Program Effective Date.
- c) The Program Effective Date shall be January 1, 2009 and the end of the first year of the term shall be December 31, 2009.
- d) This Agreement will terminate upon the earlier of
  - i. the payment to Grantee of the Maximum Program Grant Amount, or
  - ii. the payment to Grantee of the 25<sup>th</sup> annual program grant installment due for calendar years 2009 through December 31, 2033 pursuant to the computation method provided at Sections 4 and 5 of this Agreement.

### **Section 4. Program Grant Payments**

- a) City agrees, subject to the conditions and developer obligations contained in this Agreement, that the first annual installment shall be due on December 31, 2009, and must be paid by March 31, 2010. Subsequent payments shall become due December 31 of each year and must be paid by March 31 of each consecutive year, calculated as provided in Section 5 below, and continued until the term is concluded.
- b) Program Grant payments may be withheld due to delinquent ad valorem or other tax payments owed Euless by Grantee or any subsidiary or affiliate of Grantee until same are paid current, including any penalty and interest due and payable thereon.
- c) Program Grant payments due Grantee and attributable to one percent general sales and use taxes collected from a business located on the Property which is delinquent in the payment to Euless of ad valorem or other tax payments may be

withheld until such are paid current, including any penalty and interest due and payable thereon.

- d) Grantee shall agree to forfeit any program grant payment due as of December 31, 2009 if any portion of the required infrastructure remains incomplete as of that date, and to forfeit any program grant payment due as of December 31<sup>st</sup> of each subsequent year, if any portion of the required public infrastructure as identified in PD # 07-02-PD remains incomplete.

#### **Section 5. Computation of Program Grant Payments**

- a) Program grant payments shall be equal to one half of the one cent general sales and use tax paid to the State and received by Euless for general sales and use taxes from businesses located on the Property less amounts herein authorized to be withheld including any comptroller fees or timely filing discounts. Such payment shall reflect one-half of the one per cent general sales and use taxes actually received by Euless during such calendar year.
- b) The Grantee shall require in its lease and/or sales documents that all tenants and/or grantees shall provide to Euless or make available for inspection by Euless, copies of all Sales and Use Tax Reports from businesses located on the property that are subject to the grant payment.
- c) Pursuant to Section 321.3022 of the Texas Tax Code, the City shall request information relating to the tax paid to the municipality under Chapter 321 of the Texas Tax Code for purposes of verifying the amount of general sales and use tax paid to and received by the City of Euless from businesses located on the property.
- d) If the State Comptroller shall cease to provide sales tax data to Euless, City and Grantee shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative of verifying sales taxes received for purposes of verifying the annual installment payment due.
- e) The City agrees to allow Grantee the ability to assign collection, compilation, and delivery of tenants' sales tax information, including but not limited to the annual Sales Tax Reports, to a party mutually acceptable to Grantee and City.
- f) Program installment payments shall be made to Grantee by Euless by March 31<sup>st</sup> for each preceding calendar year within the Program term provided Euless shall have been able to verify the sales and use taxes received from businesses located on the Property from the Comptroller within fifty (50) days following the last day of such calendar year. In the event the Comptroller shall not have provided documentation verifying the amount of sales and use taxes paid to Euless during such preceding calendar year within such fifty (50) day period, then such program installment payment shall be paid to Grantee within ten (10) days after receipt of sales and use tax reports furnished by Grantee, it's successors or Tenants to

Eules for such period which amount shall be adjusted following receipt by Eules of such verification of sales and use taxes from the Comptroller.

- g) In the event the Comptroller determines for any reason that any sales and use taxes were erroneously paid to Eules from sales on the Property, and Eules shall have made a program installment payment as to any portion of such taxes to Grantee, Grantee agrees to reimburse Eules such amount within ten (10) days following written notification to Grantee by Eules of such refund obligation to the Comptroller. To the extent allowed by law, Eules will furnish all written notices received by Eules from the Comptroller evidencing such obligation. In the event that Eules shall have not yet made a program installment payment for the applicable year, such refund will be deducted from the calculated program grant payment.

#### **Section 6. Grantee Obligations**

- a) In consideration of the Program Grant and entitlement to the Program Grant payments, Grantee agrees as follows:
- i. The Grantee shall meet or exceed all requirements contained in (Glade Parks Planned Development #07-02 PD) and will secure all applicable platting and site plan(s) approvals.
  - ii. Eules shall not be responsible for the payment or other assumption of any incentives or other obligations required by tenants or owner occupants of the Center.
  - iii. This Agreement is applicable to the Glade Parks Planned Development and its current ownership and will remain in full effect in the event of a change in project ownership for the full term of the Program.
  - iv. The Grantee shall not be delinquent in ad valorem taxes due the City.
  - v. The terms and provisions of this Agreement are subject to changes in applicable state legislation.
- b) Grantee shall have no obligations pursuant to this Agreement if Grantee provides City with notice of its intention to terminate this Agreement ("Notice of Termination") prior to the Program Effective Date or taking receipt of Program Grant installment payments pursuant to this Agreement. The City shall not be liable for any reimbursements of costs expended for Improvements if Grantee terminates the Agreement pursuant to this section.
- c) City shall have no obligation pursuant to this Agreement if Grantee fails to comply with the obligations noted in paragraph a) of this Section 6. In the event that Eules determines Grantee has failed to meet its obligation, Eules will notify Grantee of such default. Grantee will be given notice of the default and a reasonable timeline to remedy the default. If such default is remedied within the

specified timeline, Eules's obligation under the program grant payment will be reinstated but retroactive payment shall not be required for any forfeited grant payment. A "default" for purposes of this Agreement would not include an administrative error of the City.

**Section 7. Changes in the Law, Rules or Regulations.**

In the event of any change in the law, rules or regulations appertaining to, limiting or proscribing, in whole or in part, Eules's authority to levy any sales or use taxes currently levied by Eules or to Eules's authority to make the incentive payments provided for in this Agreement, or if any opinion or ruling of any agency or court invalidates or finds all or any portion of the program grant installment payments to be unlawful or unauthorized, such incentive payments shall be reduced or terminated, as the case might be, to fully comply with such law, rule, regulation, holding or opinion and the parties reserve the right to re-negotiate this Agreement. It is further provided that should any future law, rule, regulation, holding or opinion either mandate, dedicate or require payment of any portion of the Sales and Use Tax serving as the basis for calculation of Grantee's incentive payments, or as the source of such payments, the incentive payments provided for herein shall be reduced or terminated, as the case might be, to the extent of any such mandate, dedication or requirement and the parties reserve the right to re-negotiate the Agreement.

**Section 8. Mutual Assistance**

The City and the Grantee shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and provisions of this Agreement.

**Section 9. Representations by the City**

The City represents that:

(a) The City is a home rule Texas municipal corporation and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder;

(b) The City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Grantee;

(c) The City knows of no law, order, rule or regulation applicable to the City or to the City's governing documents that would be contravened by, or conflict with the execution and delivery of this Agreement.

(d) This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The City will defend the validity of this Agreement in the event of any litigation arising hereunder that names the City as a party or which challenges the authority of

the City to enter into or perform its obligations hereunder. City recognizes that Grantee intends to commence construction and expend substantial monies in reliance upon the accuracy of the representation and warranty of the City as set forth in this Section 9.

#### **Section 10. Representations and Warranties by Grantee**

Grantee represents that:

- (a) Grantee is a Texas limited partnership duly organized and validly existing under the laws of the State of Texas and is, or will prior to the effective date of this Agreement, be qualified to do business in the State of Texas; has the legal capacity and the authority to enter into and perform its obligations under this Agreement;
- (b) The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement;
- (c) Grantee knows of no litigation proceeding, initiative, referendum, or investigation or threat of any the same contesting the powers of the City, Grantee or any of its principals or officials with respect to this Agreement that has not been disclosed in writing to the City; and
- (d) Grantee has the necessary legal ability to perform its obligations under this Agreement and has the necessary financial ability, through borrowing or otherwise, to construct the Improvements. This Agreement constitutes a valid and binding obligation of Grantee, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

#### **Section 11. Rights of Lenders and Interested Parties**

The City is aware that financing for acquisition, development and/or construction of the Improvements may be provided, in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, equity partners and purchasers or developers of portions of the Property (collectively, "Interested Parties"). In the event of default by Grantee, the City shall provide notice of such event of default at the same time notice is provided to Grantee, to any Interested Parties previously identified to the City. If any Interested Parties are permitted under the terms of its agreement with Grantee, to cure the event of default and/or to assume Grantee's position with respect to this Agreement, the City agrees to recognize such rights of any Interested Parties and to otherwise permit such Interested Parties to assume all of the rights and obligations of Grantee under this Agreement. The City shall, at any time upon reasonable request by Grantee, provide to any Interested Party an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no event of default by Grantee exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default). Upon request by any Interested Party, the City will enter into a separate assumption or similar agreement with such Interested Party, consistent with the provisions of this Section 13.

**Section 12. Changes and Amendments**

Except as specifically provided otherwise in this Agreement, any alterations or deletions to the terms of this Agreement shall be by written amendment executed by both parties to this Agreement.

**Section 13. Successors and Assigns**

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. The Grantee may assign all or part of its rights and/or obligations hereunder upon written notice to the City of such assignment.

**Section 14. Notice**

Any notice and/or statement required or permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing;

If to the Grantee:

Glade 121 L.P.  
4949 Harrison Avenue, Suite 200  
Rockford, IL 61108  
Attn: Mark A. Robinson

and to:

Jackson Walker L.L.P.  
901 Main St., Suite 6000  
Dallas, Texas 75202  
Attn: William S. Dahlstrom

If to the City:

City Manager  
City of Euless  
201 N. Ector Dr. – City Hall  
Euless, Texas 76039

and to:

Bob McFarland  
2340 W. Interstate 20, Suite 100  
Arlington, Texas 76017

**Section 15. Venue**

The obligations of the parties to this Agreement are performable in Tarrant County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Euless, Texas.

**Section 16. Applicable Laws**

This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

**Section 17. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

**Section 18. Legal Construction/Partial Invalidity of Agreement**

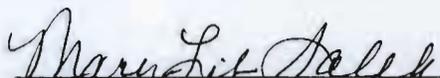
In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**Section 19. Employment of Undocumented Workers.**

During the term of this Agreement the Grantee agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the amount of the Grants and any other funds received by the Company from the City as of the date of such violation within 120 business days after the date the Company is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid. The Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Company or by a person with who the Company contracts.

EXECUTED and effective as of the 13<sup>th</sup> day of May, 2008, by City, signing by and through its Mayor, duly authorized to execute same by action of the City Council and by Grantee, acting through its duly authorized officials.

CITY OF EULESS, TEXAS

  
\_\_\_\_\_  
MARY LIB SALEH, Mayor

ATTEST:

SUSAN CRIM, CITY SECRETARY

BY: 

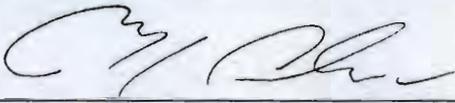
APPROVED AS TO LEGAL FORM:  
BOB MCFARLAND, CITY ATTORNEY

BY: 

GRANTEE:

GLADE 121, L.P. a Texas limited partnership

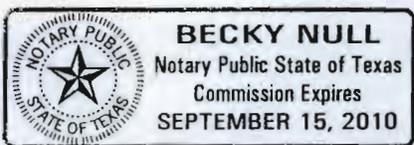
By: Glade 121, G.P., L.L.C. a Texas limited liability company, its sole General Partner

By:   
MARK ROBINSON, Member

ACKNOWLEDGMENTS

STATE OF TEXAS            )  
  )  
COUNTY OF TARRANT    )

This instrument was acknowledged before me on the 13<sup>th</sup> day of May, 2008,  
by Mary Lib Saleh, Mayor of the City of Euless, Texas, on behalf of said city.



Becky Null  
Notary Public, in and for the State of Texas

My Commission expires: 9/15/10

STATE OF ILLINOIS        )  
  )  
COUNTY OF Winnebago  )

This instrument was acknowledged before me on the 23<sup>rd</sup> day of May, 2008,  
by Mark Robinson, as <sup>President of the</sup> manager for Glade 121 GP, LLC, a Texas limited liability company, as  
general partner of Glade 121, L.P., a Texas limited partnership, on behalf of said limited  
partnership.



Anita R. Burkholder  
Notary Public, in and for the State of Illinois

My Commission expires: 06/18/08