

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

**PHASE III AND IV DEVELOPMENT AGREEMENT
WITH RUBY-12-GLADERETAILE, LLC**

This Phase III and IV Development Agreement (“Agreement”) is made and entered into effective the ____ day of _____, 2013 by and between Ruby-12-Gladeretail, LLC, a Delaware limited liability company (“Ruby-12”), (“Developer”) and the City of Euless, Texas (“City”), a home rule municipality organized and existing under the constitution and laws of the State of Texas, for the purposes and considerations stated below.

WHEREAS, City and Glade 121, L.P. entered into a development agreement effective March 10, 2011 (the “General Development Agreement”) to undertake a project to improve and develop a site of approximately 193 acres within the City of Euless as a regional mixed use development (the “Development”) creating multiple new employment opportunities, shopping opportunities, and additional revenue to City and other taxing jurisdictions in accordance with the Glade Parks Planned Development District approved by City (the “Glade Parks PD”); and

WHEREAS, City has determined that the Development will promote local economic development and stimulate business and commercial activity as well as provide for additional residential opportunities for citizens within the municipality; and

WHEREAS, as an inducement to the Development, City approved Ordinance No. 1892 creating Tax Increment Reinvestment Zone Number Three (the “TIRZ”) on November 9, 2010 in accordance with the Tax Increment Financing Act, VTCA Tax Code, Chapter 311 (the “Act”); and

WHEREAS, on November 23, 2010, with the adoption of Ordinance No. 1894, the TIRZ Project and Financing Plan was approved in accordance with the Act; and

WHEREAS, the Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality consistent with the project plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in the Act; and

WHEREAS, City and other taxing entities contribute into a tax increment fund a percentage of the difference between the ad valorem property taxes attributable to the TIRZ for 2010 and the ad valorem property taxes attributable to the TIRZ for each year following 2010; and

WHEREAS, the total revenue collected and required by the Act to be deposited into a

tax increment fund each calendar year from participating taxing entities (excluding ad valorem tax revenues attributable to the mineral estate, including but not limited to oil and gas) is referred to herein as the “TIRZ Revenue”; and

WHEREAS, in the General Development Agreement City agreed to pay for certain infrastructure improvements as TIRZ Revenue became available or at such time as the taxable value of on-the-ground improvements and sales tax from the Development was sufficient to service debt; and

WHEREAS, on June 30, 2011, City and Glade 121, L.P. entered into another development agreement (“Phase II Development Agreement”) in order to provide for the construction of certain scheduled infrastructure prior to City’s time schedule to perform such obligations under the General Development Agreement; and

WHEREAS, all rights, duties, and obligations of Glade 121, L.P. under the General Development Agreement and the Phase II Development Agreement have been assumed by Developer; and

WHEREAS, pursuant to this Agreement Developer similarly wishes to complete construction of a portion of the infrastructure provided in the Project and Financing Plan prior to City’s time schedule to perform such obligations under the General Development Agreement; and

WHEREAS, City and Developer desire to enter into this Agreement to set forth responsibilities of the parties necessary to implement the obligations of each party under the General Development Agreement with respect to the Project (hereinafter defined) set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises above stated and hereinafter set forth, the parties agree as follows:

Section 1. Project

Developer and City will cooperate in the design and construction of certain public infrastructure (the “Project”) as set forth in this Agreement. The Project will be completed in two phases as described below.

- a) Phase III - Rio Grande Blvd. from its current terminus to Cheek Sparger Road (approx. 3000LF); Goodnight Trail (approx. 230 LF); Brazos Blvd (approx. 230 LF); and SH 121 Frontage Road acceleration/deceleration lanes. Road construction shall include design and construction of any required public sidewalks, City utilities (sanitary sewer and water mains, storm sewer), franchise utility services (electricity, natural gas, and telephone), pavement, excavation, landscaping, general conditions, inspection fees, and other miscellaneous costs related to and necessary for the completion of the public infrastructure, as described and depicted in Exhibit “A”. The Project will also include the bridge over Little Bear Creek along Rio Grande Blvd, a traffic signal at the intersection

of Rio Grande Blvd and Cheek Sparger and construction of the entryway signs in accordance with the Glade Parks PD and landscaping of the medians along public streets and design and construction of City utilities (approximately 1640 linear feet of sanitary sewer main) to serve a single family residential development including general conditions, inspection fees, and other miscellaneous costs related to and necessary for the completion of the public infrastructure.

- b) Phase IV - Brazos Blvd. from Rio Grande Blvd to its current terminus. Road construction shall include design and construction of any required public sidewalks, City utilities (sanitary sewer and water mains, storm sewer), franchise utilities (electricity, natural gas, and telephone), pavement, excavation, landscaping, general conditions, inspection fees and other miscellaneous costs related to and necessary for the completion of the public infrastructure as described and depicted in Exhibit "A", plus any and all remaining infrastructure improvements, contemplated in the Project and Financing Plan, not to exceed the maximum amount of \$12,100,604 approved in the TIRZ.

Developer and City may upon mutual written agreement, amend the scope of either phase of the project within the limitation of the total project expenditures contemplated in the Project and Financing Plan and approved in the TIRZ.

Section 2. Developer Obligations

Developer agrees as follows:

- a) Upon obtaining the estimate under Section 3(a) for items in Phase III of the Project as described in Section 1(a), Developer shall place 125% of the total estimated hard cost of construction plus 100% of the estimated soft costs and contingency into an escrow account to be held by City. Prior to the award of the bid by City for construction of Phase III of the Project, Developer will supplement the escrow account, if necessary, so that the monies in the escrow account equal 110% of the full amount of the hard cost to construct the Project and 100% of the estimated soft costs and contingency, or, if there are excess funds over the required amount of the escrow, then Developer shall receive a refund of any such excess amount within 5 days of the award of bids by City. City is not required to expend any funds for the Project in excess of the amount of funds in the escrow account and any deficiency in such funds shall be delivered by Developer to City within thirty (30) days following receipt of a request therefore from City. City will use the funds in the escrow account only to pay for costs to construct Phase III of the Project unless otherwise authorized in writing by the Developer. Any escrow funds not expended on the construction of the Project shall be refunded to Developer upon completion of Phase III of the Project.
- b) Upon obtaining the estimate under Section 3(b) for items in Phase IV of the Project as described in Section 1(b), Developer shall place 125% of the total estimated hard cost of construction plus 100% of the estimated soft costs and contingency into an escrow account to be held by City. Prior to the award of the bid by City for construction of Phase IV of the Project, Developer will supplement the escrow account, if necessary, so

that the monies in the escrow account equal 110% of the full amount of the hard cost to construct the Project and 100% of the estimated soft costs and contingency, or, if there are excess funds over the required amount of the escrow, then Developer shall receive a refund of any such excess amount within 5 days of the award of bids by City. City is not required to expend any funds for the Project in excess of the amount of funds in the escrow account and any deficiency in such funds shall be delivered by Developer to City within thirty (30) days following receipt of a request therefore from City. City will use the funds in the escrow account only to pay all costs to construct Phase IV of the Project unless otherwise authorized in writing by the Developer. Any escrow funds not expended on the construction of the Project shall be refunded to Developer upon completion of Phase IV of the Project. City may choose, at its sole discretion, to reduce the required escrow by any remaining bond funds available for eligible expenses.

- c) Developer shall be in compliance with all obligations set forth in the General Development Agreement that are applicable to the Project.
- d) To the extent not previously granted by Developer, simultaneously with the execution hereof, Developer shall convey necessary right-of-way and Emergency Access and Drainage Utility Easements (EADUE) and other necessary utility easements for Phase III of the Project at no cost to City.
- e) Prior to the city advertising for bid Phase IV as set forth in Section 3(b), Developer shall convey necessary right-of-way and Emergency Access and Drainage Utility Easements (EADUE) and other necessary utility easements at no cost to City.

Section 3. City Obligations

- a) City shall contract with a qualified engineering firm licensed in the State of Texas to design Phase III of the Project as described in Section 1(a), prepare an estimate of the total cost to construct Phase III of the Project, and prepare construction plans and a bid packet for the City to use for advertising and awarding bids to construct Phase III of the Project. City shall have the right to approve such plans and to ensure compliance with Glade Parks PD.
- b) Upon request by Developer to proceed with Phase IV of the Project, City, with mutual consent of the Developer, shall contract with a qualified engineering firm licensed in the state of Texas to design Phase IV of the Project as described in Section 1(b), prepare an estimate of the total cost to construct Phase IV of the Project, and prepare construction plans and a bid packet for City to use for advertising and awarding bids to construct the Project. City shall have the right to approve such plans and to ensure compliance with the Glade Parks PD. City shall be entitled to reimbursement for any expenses associated with the engineering cost from proceeds of the escrow established pursuant to Section 2(b).
- c) Within 30 days after approval by City of construction plans for each phase of the project

and deposit by Developer of the estimated cost of construction into the escrow fund and conveyance of the necessary right of way and easements, City shall advertise and competitively bid construction of the applicable project phase. City shall award the bid to the contractor or contractors it deems best qualified to construct the applicable project phase within 45 days after the date of bid opening. City will cause construction of the work for each phase to commence within 75 days after the construction contract is awarded and diligently pursue completion of the project.

- d) City shall reimburse Developer for costs of Phase III of the Project when, in the sole determination of City, the taxable value of on-the-ground improvements as reported by Tarrant Appraisal District on the certified tax roll and sales tax receipts from the Development and committed to the TIRZ is sufficient to pay projected debt service on City issued Tax and Waterworks and Sewer System (Limited Pledge) Revenue Certificates of Obligations, Series 2011 (Exhibit B) but not later than such time as actual receipt of TIRZ revenue received by the City is sufficient to cover the debt service shown in Exhibit B. Such determination by the City will be made based on the assessed value of the property contained within the TIRZ as reported by Tarrant Appraisal District, revenue committed to the TIRZ by the participating entities and the debt service schedules. Such reimbursement, when combined with previously issued debt obligations for TIRZ expenditures, shall not exceed \$9,035,000. Reimbursement due to Developer in excess of the stated maximum will be eligible for reimbursement in accordance with the terms of Section 3(e).
- e) City shall reimburse Developer for costs of Phase IV of the Project when, in the sole determination of City, the taxable value of on-the-ground improvements and sales tax receipts from the Development is sufficient to pay projected debt service on City issued Tax and Waterworks and Sewer System (Limited Pledge) Revenue Certificates of Obligations, Series 2011 (Exhibit B) and any debt issued pursuant to the Phase II Development Agreement and any debt associated with the reimbursement of expenses associated with Phase III of this Agreement but not later than such time as actual receipt of TIRZ revenue received by the City is sufficient to cover the debt service shown in Exhibit B plus any debt issued pursuant to the Phase II Development Agreement and any debt associated with the reimbursement of expenses associated with Phase III of this Agreement. Such determination by City will be made based on the assessed value of the property contained within the TIRZ as reported by Tarrant Appraisal District, revenue committed to the TIRZ by the participating entities and the debt service schedules. Such reimbursement when combined with previously qualified TIRZ expenditures shall not exceed the stated maximum of \$12,100,604.
- f) City shall not be obligated to issue bonds or debt under this Agreement that cannot be fully serviced from projected TIRZ Revenue. City's issuance of bonds or other obligations is subject to State law and approval, as required, by the Texas Attorney General's office. The particular terms and provisions regarding the issuance of any bond instruments, certificates or other indebtedness will be subject to the sole discretion of the city council acting at the time any such instruments are issued, not in contravention of the terms of this Agreement.

- e.) City agrees to maintain all escrowed funds in one or more separate, segregated, AAA or AAAM rated public fund investment pools.

Section 4. Mutual Assistance

City and Developer 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 5. Representations by City

City represents that:

- a) 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) City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer;
- c) City knows of no law, order, rule or regulation applicable to City 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 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. City will defend the validity of this Agreement in the event of any litigation arising hereunder that names City as a party or which challenges the authority of City to enter into or perform its obligations hereunder.

Section 6. Representations and Warranties by Developer

Developer recognizes that City intends to commence construction and expend substantial monies in reliance upon the accuracy of the representations and warranties of Developer as set forth in this Section 6. Developer represents that:

- a) Developer is a Delaware limited liability company duly organized and validly existing under the laws of the State of Texas and is qualified to do business in the State of Texas, and 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 Developer's part to make this Agreement;

- c) Developer knows of no litigation, proceeding, initiative, referendum, or investigation or threat of the same contesting the powers of Developer or any of its principals or officials with respect to this Agreement that has not been disclosed in writing to City; and
- d) Developer has the necessary legal ability to perform its obligations under this Agreement and has the necessary financial ability to meet its obligations. This Agreement constitutes a valid and binding obligation of Developer, 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 7. 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 8. Successors and Assigns

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

Section 9. 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 Developer:

Ruby-12-Gladeretail, LLC
6723 Weaver Road, Suite 108
Rockford, IL 61114
Attn: Zach Knutson

If to City:

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

and to:

Taylor Olson Adkins Sralla Elam, LLP
6000 Western Place, Suite 200

Fort Worth, Texas 76107-4654
Attn: Wayne Olson

Section 10. 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 Tarrant County, Texas.

Section 11. 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 12. Governing Law

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

Section 13. 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.

EXECUTED and effective as of the ____ day of _____, 2013.

CITY OF EULESS, TEXAS

Gary L. McKamie, City Manager

DEVELOPER:

Ruby-12-Gladeretail, LLC, a Delaware limited liability company

By: _____
Zach Knutson, Vice President

ACKNOWLEDGMENTS

STATE OF TEXAS §
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COUNTY OF TARRANT §

This instrument was acknowledged before me on the ____ day of _____, 2013, by Gary L. McKamie, City Manager of the City of Eules, Texas, on behalf of said city.

Notary Public, in and for the State of Texas
My Commission expires:_____

STATE OF ILLINOIS §
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COUNTY OF WINNEBAGO §

This instrument was acknowledged before me on the ____ day of _____, 2013, by Zach Knutson, Vice President of Ruby-12-Gladeretail, LLC, a Delaware limited liability company.

Notary Public, in and for the State of Illinois
My Commission expires:_____