



City of Rowlett
Official Copy

4000 Main Street
Rowlett, TX 75088
www.rowlett.com

Resolution: RES-111-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH BRIARWOOD ARMSTRONG, LLC, PERTAINING TO A SPROUTS FARMERS MARKET GROCERY STORE; AUTHORIZING THE CITY MANAGER TO ENTER INTO THE AGREEMENT ON THE CITY'S BEHALF; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Rowlett, Texas, has negotiated an Economic Development Incentive Agreement with Briarwood Armstrong, LLC, for the development of a commercial retail center anchored by a 28,000 square foot Sprouts Farmers Market, which, when completed, will involve the development and construction of all infrastructure to serve said facility; and

WHEREAS, the Agreement provides for economic development incentives through use of Drainage Fund fees and grants for rollback taxes up to a specified amount for the first phase of the development; and

WHEREAS, the project is designed and will be constructed according to the approved City standards, and the successful development of the project, which would not occur in the absence of the economic development incentives, is in the best interest of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:

Section 1: That the Economic Development Incentive Agreement attached hereto as Exhibit A, having been reviewed by the City Council of the City of Rowlett, Texas, be and is hereby approved.

Section 2: That the Mayor be and is hereby authorized to execute the Economic Development Incentive Agreement and any necessary documents conforming to this resolution, and any necessary and appropriate documents and instruments in accordance with the Agreement.

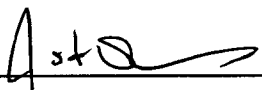
Section 3: That this resolution shall become effective immediately upon its passage.

At a meeting of the City Council on November 4, 2014 this Resolution be adopted. The motion carried by the following vote:

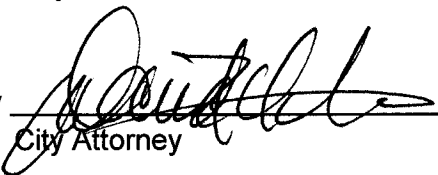
Ayes: 5 Mayor Gottel, Mayor Pro Tem Gallops, Deputy Mayor Pro Tem Pankratz, Councilmember van Bloemendaal and Councilmember Bobbitt

Absent: 2 Councilmember Dana-Bashian and Councilmember Sheffield

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Approved by 
Mayor

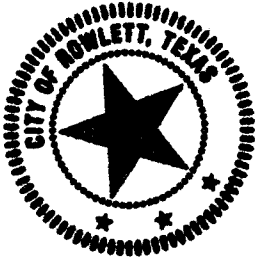
Date November 4, 2014

Approved to form by 
City Attorney

Date November 4, 2014

Certified by 
City Secretary

Date November 4, 2014



STATE OF TEXAS §
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COUNTY OF DALLAS §

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (this "Agreement") is entered into as of the Effective Date described herein between the City of Rowlett, Texas, a Texas municipal corporation, (the "City") and Briarwood Armstrong, LLC, a Texas limited liability company, (the "Developer"), each acting by and through its duly authorized representatives.

RECITALS

WHEREAS, Developer owns or will acquire certain land located at 2801 Lakeview Parkway, generally situated along the northern side of Lakeview Parkway to the west of Rowlett Road, consisting of 4.99 +/- acres within the City (the "Property"), that Developer intends to improve by the construction of the Project described hereinafter; and

WHEREAS, the attraction of private investment and the diversification of retail and residential product types in the City will promote economic development, stimulate commercial activity, provide additional jobs and residential opportunities for the citizens of the City, generate additional tax revenue, and enhance the tax base and economic vitality of the City; and

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to provide economic development grants to promote local economic development and to stimulate private investment in the City; and

WHEREAS, the City has determined that making economic development grants in accordance with this Agreement will further the objectives of the City and will benefit the City and its inhabitants and will promote local economic development and stimulate employment, business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

ARTICLE 1
Certain Definitions

“Commencement of Construction” shall mean that (i) plans have been prepared and submitted to the City; and (ii) all necessary permits for the construction on the Property pursuant to the respective plans have been issued by the City.

“Completion of Construction” shall mean April 1, 2016, or the date upon which the City issues a final certificate of occupancy for the last major structure built on the Property, which shall include the City’s acceptance of all Infrastructure following its installation, construction, inspection, testing and final completion, whichever occurs earlier. As used herein, “major structure” shall not include accessory buildings, pavement, artistic elements, recreational or scenic facilities, or parking facilities.

“Effective Date” shall mean the last date of execution of this Agreement.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of a party’s existence as an on-going business, insolvency, appointment of receiver for any part of a party’s property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party and in the event such proceeding is not voluntarily commenced by the party, such proceeding is not dismissed within ninety (90) business days after the filing thereof.

“Force Majeure” shall mean any delays due to strikes, riots, acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), terrorist activities, blockage, embargo, labor dispute, labor strike, or labor-related lockout or interruption, not within the control of the party asserting Force Majeure. If a party asserts Force Majeure as an excuse for failure to timely perform the party’s obligation, then that party must establish that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in this definition.

“Grant” shall mean the Grant as defined in Article 2 below, and is inclusive of all grants and amounts described in Article 2.

“Infrastructure” means infrastructure necessary to develop the Project including streets and roads, site improvements, water and sewer facilities (other than services and lines on individual lots to mains), and drainage and related improvements, including but not limited to: (1) the design, engineering and construction of streets, roads, bridges, on or off site of the Project (and related type of improvements) necessary for the Project or for access or improved access to the Property; (2) the design, engineering, construction and installation of water, sewer and drainage utilities on or off site of the Property necessary for the development of the Project, and any portion of the underlying facilities necessary to extend, enlarge, support or provide such utility systems to the Property; and (3) the design, engineering, construction and installation of drainage and related improvements on or off site of the Property (e.g. storm sewers, detention ponds, retention ponds, drainage pipes, culverts, over sizing of facilities) necessary for the Project.

“Project” means the construction and development of a retail shopping center on the Property that will consist of or include a Sprouts Farmers Market grocery store (comprising approximately 28,000 square feet) and detached associated retail structure (comprising approximately 7,500 square feet), the extension of the existing drive aisle and access drive to and from Kenwood Drive parallel to Lakeview Parkway, and the associated infrastructure improvements as shown in the Concept Site Plan attached hereto and incorporated herein as Exhibit “A”.

“Rollback Taxes” means any additional ad valorem taxes and interest imposed for years prior to the date on which Developer acquires title to the Property due to a change in use (and consequent change in appraisal method) of the Property from agricultural or open-space, but does not include penalties.

ARTICLE 2

Economic Development Grant

2.1. Grant. Subject to the terms, covenants and conditions of this Agreement, the City will make economic development grants to Developer, from lawfully available funds and provided there is no default hereunder, in the amounts and at the times set forth hereinafter.

- a) **City 380 Grant.** The City shall give Developer a grant in an amount which will represent the City’s portion of Rollback Taxes paid by Developer upon its acquisition of the Property under the following terms and conditions:
 - 1) The grant shall be given to Developer in one lump sum payment. As a precondition to the grant payment to be made hereunder, the Developer shall provide the City with written verification to the City that Developer has paid the City’s Rollback Taxes on the Property.
 - 2) In no event shall the total of all grant payments made by the City exceed the sum of \$56,000.
 - 3) The City shall make the grant payment to Developer within sixty (60) days after receipt by the City of verification of payment of the City’s Rollback Taxes or the City’s receipt of the tax payment, whichever occurs later.
- b) **Infrastructure Grants.** The City will further give Developer grants for 1) the construction of a traffic signal at the intersection of Lakeview Parkway and the agreed-upon entrance from Lakeview Parkway to the Project (the “Lakeview Parkway Traffic Signal Grant”), and 2) the design, construction, improvement and installation of private circulation drive and drainage culvert providing for cross-access between adjacent properties in the location set forth in Exhibit “A.” The amounts and conditions of the foregoing grants are stated in Article 3 below.

ARTICLE 3

Performance Obligations

The obligation of the City to make Grant payments in accordance with the foregoing, and the obligations assumed by Developer as conditions precedent and subsequent to the receipt of said Grant funds, are subject to the following:

3.1. Performance Criteria.

- a) Developer shall diligently pursue the development of the Project, subject to events of Force Majeure. Developer shall apply for all permits required by applicable laws necessary to complete the Project promptly following execution of this Agreement and the Project must be constructed in substantial compliance with the concept plan attached hereto and incorporated herein as Exhibit "A".
- b) Commencement of Construction shall occur on or before February 1, 2015.
- c) Developer will achieve Completion of Construction of the Project, subject to events of Force Majeure, no later than April 1, 2016.
- d) The value of all improvements for the Project, based on estimated costs of construction, shall be approximately \$7.2 million.
- e) During the term of this Agreement, Developer or its approved successors or assigns shall continuously own and occupy the Property (subject to approved assignments) and shall continuously operate the Project.
- f) Lakeview Parkway Traffic Signal Grant: The City shall contract with Developer for the construction and installation of a traffic signal on Lakeview Parkway at the location shown in Exhibit "A". The Developer shall have the responsibility for the construction, installation and testing of the traffic signal and, upon final testing and City approval, the traffic signal and all associated equipment and facilities shall be dedicated to the City. The City shall thereafter bear responsibility for operation and maintenance. In consideration for the construction and installation of the traffic signal, the City will remit to Developer a sum equal to but not to exceed the amount of roadway impact fees paid by Developer to City. Payment shall be due within thirty (30) days after inspection, testing and approval by the City.
- g) Off-Site Culvert Crossing Grant: The Developer will design, construct, improve and install a private circulation drive providing for cross-access between adjacent properties, and a drainage culvert, in the location set forth in Exhibit "A." The design and construction shall be in accordance with City-accepted and City-approved design and construction standards and criteria. The construction and maintenance shall be the responsibility of the property owner, Developer or its successors, and shall not be dedicated to or accepted by the City. In consideration for the design, construction, improvement and installation of the drive approach and culvert, the City will remit to Developer the sum of \$225,000.00. Payment shall be due within thirty (30) days after inspection, testing and approval by the City.

ARTICLE 4

Grant Limitations

4.1 Grant Limitations. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

ARTICLE 5

Events of Default; Events of Termination; Recapture

5.1 This Agreement terminates upon any one of the following:

- a) by mutual written agreement of the parties;
- b) by the City if the Developer defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-breaching party;
- c) by the Developer if the City defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-breaching party;
- c) by the City if Developer or an assignee or successor in interest fails to meet any one or more of the Performance Obligations identified in Article 3 above;
- d) by the City if any taxes, fees or charges owed to the City, the Garland Independent School District, the County of Dallas, or the State of Texas by Developer shall have become delinquent (provided, however, Developer retains the right to timely and properly protest and contest appraised values for ad valorem tax purposes);
- e) by the City if Developer suffers an Event of Bankruptcy or Insolvency; or
- f) by the City or by Developer, respectively, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid or illegal.

5.2 Recapture.

- a) In the event that this Agreement is terminated as to any party prior to payment of the Grant, the obligation of the City to fund said Grant (or any remaining portion thereof) shall cease immediately. In the event that this Agreement is terminated by the City based upon Developer's breach or failure to meet any one or more of the Performance Obligations of Article 3 hereof, the City shall have no obligation to fund the Grant (or waive the fees); if all or any portion of the Grant has been paid to Developer, or if any fees have been waived, then Developer shall, immediately upon notice, refund all amounts previously paid or waived.

ARTICLE 6

Covenants, Representations, and Warranties

6.1 Separated Contracts. In developing and constructing the Project, Developer will use reasonable efforts to encourage all contractors and vendors to use "separated contracts" (as that term is defined in Sec. 3.291, Title 34, of the Texas Administrative Code), in order to maximize sales tax revenues to the City. However, the failure of Developer's contractors and vendors to use "separated contracts" shall not be a default or breach of the terms of this Agreement.

6.2 Existence; Authority.

a) Developer represents and warrants that it has sufficient legal authority to conduct business in the State of Texas; that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement; and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

b) The City represents and warrants that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement; and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

6.3 Limitation of Liability. Except for the City's obligation to pay the Grant proceeds as set forth in this Agreement, the City and its past, present and future officials, officers, employees and agents make no warranties and assume no responsibilities or liabilities to Developer or any third party in connection with the development and improvement of the Property or the Project, and Developer hereby holds harmless and waives any and all claims against the City and its officials, officers, employees, agents and representatives for any claims, losses, injury, or damage to persons or property. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties and no party shall in any way be deemed an agent of the other. Developer acknowledges and agrees that there shall be no personal recourse to the officials, officers, employees or agents of the City, who shall incur or assume no liability in respect of any claims based upon or relating to this Agreement. By entering into this Agreement, the City does not and shall not be deemed to waive any defenses or immunities, whether governmental, sovereign, official, qualified or otherwise, all such defenses and immunities being hereby expressly retained. Nothing in this Agreement is intended, and nothing herein shall in any way be deemed, to confer or create any rights in any person not a party to this Agreement.

**ARTICLE 7
Miscellaneous**

7.1 Recitals. The recitals in the preamble to this Agreement are hereby incorporated herein as part of this Agreement.

7.2 Binding Agreement; Assignment. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement may be

assigned by Developer, and Developer shall have the authority to assign, sell or transfer ownership of the Project to any person, with the consent of the City, which consent shall not be unreasonably withheld. However, no consent shall be required for an assignment or transfer to an affiliate, parent or subsidiary of Developer, but notice of such assignment or transfer shall be given.

7.3 Governing Law. The validity of this Agreement and all of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall lie exclusively in the state courts of appropriate jurisdiction in Dallas County, Texas.

7.4 Amendment. This Agreement may be amended only by the mutual written agreement of the parties hereto.

7.5 Legal Construction. In the event 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 the other provisions hereof, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

7.6 Notices. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee): (i) upon actual receipt or refusal by the addressee by hand, telecopier or other electronic transmission; or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid; or (iii) one (1) business day after having been deposited with an expedited, overnight courier service (e.g. U.S. Express Mail or Federal Express) for one-day delivery, addressed to the party to whom notice is intended to be given at the following addresses:

If intended for City, to:

City of Rowlett
4000 Main Street
Rowlett, Texas
Attn: City Manager

With a copy to:

David M. Berman, City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

If intended for Developer, to:

Briarwood Armstrong, LLC
Attn: Walker Royall
2911 Turtle Creek Blvd #1240

Briarwood Armstrong, LLC
Attn: Douglas Kyle
One Armstrong Place
Butler, PA 16001

With copy to:

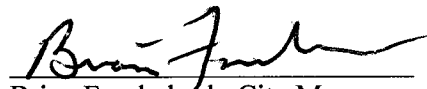
Kristian J. Jamieson
One Armstrong Place
Butler, PA 16001

7.7 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

7.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

EXECUTED in single or multiple originals on the date(s) set forth below.

CITY OF ROWLETT, TEXAS


Brian Funderburk, City Manager

Date: 11-6-14

ATTEST:


Laura Hallmark, City Secretary

DEVELOPER

By: 
Brianwood Armstrong LLC
Member

Date: 12-23-14

Mayor ~ Todd Gattel
Mayor Pro Tem ~ Michael Gallops
Deputy Mayor Pro
Tem ~ Carl Pankratz

City Council ~
Rick Sheffield
Tammy Dana-Bashian
Debby Bobbitt
Robbert van Bloemendaal

City Manager ~ Brian Funderburk



*A unique community where families
enjoy life and feel at home*

January 16, 2015

Briarwood Armstrong, LLC

2911 Turtle Creek Blvd, Suite 1240

Dallas, Texas 75216

RE: Letter Amendment to:

Economic Development Incentive Agreement:

City of Rowlett, Texas and Briarwood Armstrong, LLC

Dear Briarwood:

In connection with the Economic Development Incentive Agreement ("Agreement") referenced above, effective December 23, 2014, the parties agree to further define subsection (g) of section 3.1, to state as follows:

g) Off-Site Culvert Crossing Grant: The Developer will design, construct, improve and install a private circulation drive providing for cross-access between adjacent properties, and a drainage culvert, in the location set forth in Exhibit "A." The design and construction shall be in accordance with City-accepted and City-approved design and construction standards and criteria. The construction and maintenance shall be the responsibility of the property owner, Developer or its successors, and shall not be dedicated to or accepted by the City. In consideration for the design, construction, improvement and installation of the drive approach and culvert, the City will remit to Developer the sum of \$225,000.00. Payment shall be due within thirty (30) days after inspection, testing and approval by the City. This payment may, however, be reduced in accordance with right-of-way acquisition costs incurred by the City (to include payments made to property owners, ROW acquisition agents, and direct costs incurred to acquire rights-of-way) to convert the existing private easement on the adjacent properties in the Luke's Landing subdivision/addition to a public street or roadway. Such reduction shall not exceed \$62,750 without Briarwood Armstrong LLC's approval.

This letter agreement is intended to and shall serve as a written amendment of the Agreement in compliance with Section 7.4 of the Agreement.

Sincerely,

City of Rowlett, Texas

By: Brian Funderburk
Brian Funderburk, City Manager

AGREED:

Briarwood Armstrong, LLC

By: [Signature] Manager

Date: 1/16/15

EXHIBIT A
CONCEPT SITE PLAN

