

**THIRD AMENDMENT TO
DEVELOPMENT FINANCING AGREEMENT BY AND AMONG
THE CITY OF PFLUGERVILLE, TEXAS,
REINVESTMENT ZONE NUMBER ONE, CITY OF PFLUGERVILLE, TEXAS,
AND TERRABROOK FALCON POINTE, L.L.C.**

This **THIRD AMENDMENT TO DEVELOPMENT FINANCING AGREEMENT** (this "Third Amendment"), effective as of _____, 2016, is made by and among the **CITY OF PFLUGERVILLE, TEXAS**, a municipal corporation and a home rule city in the State of Texas (the "City"); **REINVESTMENT ZONE NUMBER ONE, CITY OF PFLUGERVILLE, TEXAS**, a reinvestment zone created by the City pursuant to Chapter 311, Texas Tax Code (the "Zone"); and **TERRABROOK FALCON POINTE, L.L.C.**, a Delaware limited partnership (the "Developer")(collectively referred to as the "Parties").

RECITALS

WHEREAS, the City created the Zone pursuant to Chapter 311, Texas Tax Code (the Code"), and the TIRZ Plan was approved by both the Zone Board and the City; and

WHEREAS, the Agreement, pursuant to the Code a financing and project plan are required to be adopted; and

WHEREAS, the City, the Zone and the Developer entered into that certain Development Financing Agreement By And Among The City Of Pflugerville, Texas, Reinvestment Zone Number One, City Of Pflugerville, Texas, And Terrabrook Falcon Pointe, L.P Board of Directors of the Zone (the "Agreement"), providing for the financing and construction of certain Projects by the Developer and the City; and

WHEREAS, the Section 311.011 (h) of the Code provides that unless specifically provided otherwise in the plan, all amounts contained in the project plan or reinvestment zone financing plan, including amounts of expenditures relating to project costs and amounts relating to participation by taxing units, are considered estimates and do not act as a limitation on the described items, but the amounts contained in the project plan or reinvestment zone financing plan may not vary materially from the estimates; and

WHEREAS, the Agreement provides for a third party auditor to conduct a reimbursement audit has provided for in the agreement; and

WHEREAS, the Parties desire to clarify the requirements of the audit and responsibilities of the Auditor.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the City, the Zone, and the Developer agree to amend the Agreement as follows:

1. Amendments:

Section I, Definitions is amended to redefine the terms "Auditor" and "Reimbursement Audit" as follows:

"Auditor" shall mean the firm of independent certified public accountants employed by the Zone to audit the Zone's annual financial statements.

"Reimbursement Audit" shall mean a report prepared by the a Reimbursement Auditor calculating and approving the reimbursement to the Developer or the City for funds advanced for the design and construction of a particular TIRZ Project pursuant to the requirements of this Agreement.

Section I, Definitions is amended to define the term "Reimbursement Auditor" as follows:

"Reimbursement Auditor" shall mean a firm of independent certified public accountants experienced in the industry of construction audits and employed by the Zone to audit reimbursements of a Project.

Section II.C. 8. Development of Projects shall be amended to read as follows:

(8) Upon completion of the particular Project, the Project Manager shall present a project summary to the Zone Board, including: (i) a summary of construction costs, including all pay estimates and change orders, and (ii) evidence of final acceptance by the public entity responsible for operation and maintenance. The Project Manager shall also promptly present or require presentation to the Auditor all information, such as invoices, pay estimates and cancelled checks, necessary or convenient for the preparation of a Reimbursement Audit. The Reimbursement Auditor shall then prepare a Reimbursement Audit with respect to the Project as provided for in Section III.k. of this Agreement.

Section III, Financing and Reimbursement of Project Costs shall be amended to add the following section:

k. The Reimbursement Auditor shall, upon request of the Project Manager, prepare a Reimbursement Audit. The Reimbursement Auditor's primary

objective is to examine the actual Project costs as compared to the Project cost representations, as provided for in the Project bid documents, and to express an opinion as to whether such incurred costs are reasonable, allowable under this Agreement, determined under generally accepted accounting principles and cost accounting standards applicable in the circumstances, and not prohibited by the contract, or by previous agreement with, or decision of, the Project Manager.

All Reimbursement Audits emphasis will be on determining the overall acceptability of the Party's claimed Project costs with respect to the (1) reasonableness of nature and amount; (2) the application of duly promulgated Cost Accounting Standards and generally accepted accounting principles and practices appropriate to the particular Project; (3) compliance with applicable cost limitations or exclusions as stated in this Agreement and applicable bid documents; (4) consistency with the applicable bid documents; and (5) compliance with Section II.E. and Section III of this Agreement as applicable. To ensure the application of the appropriate cost principles, the Reimbursement Auditor should consider the dates the contracts were awarded and include the following information as necessary or applicable to clarify discrepancies:

- 1) The Contract Documents, including all drawings, specifications, addenda, change orders, work change directives, field orders.
- 2) Any Requests for Information and written interpretations and clarifications, in good order and annotated to show changes made during construction;
- 3) Progress reports, schedules, and notices;
- 4) Satisfactory evidence as to the source, kind, and quality of materials and equipment;
- 5) Any supporting documentation reflecting costs incurred on this Project sufficient for Owner to verify invoiced costs, including all proposals, bids, and statements of qualifications.

The Project Manager and the Parties shall promptly present or require presentation to the Reimbursement Auditor all information, including but not limited, invoices, pay estimates and cancelled checks, necessary or convenient for the preparation of a Reimbursement Audit.

2. Entire Agreement; Conflict. Except as amended by this Amendment, the Agreement is and shall remain in full force and effect. This Amendment, together with the Agreement as amended by this Amendment: (a) is intended by the parties as a final, complete and exclusive expression of the terms of their agreement, and (b) supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof. If there is a conflict between the Agreement and this Amendment, the terms of the Amendment will prevail.
3. Binding Agreement. The terms and conditions of this Amendment are binding upon the successors and permitted assigns of the Parties hereto.
4. Legal Construction. In the event any one or more of the provisions contained in this Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Amendment that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Amendment which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable to the extent that it does not deprive the Parties of the benefit of the bargain and only to the extent permissible by law.

[EXECUTION PAGES FOLLOW]

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the City, the Zone, and the Developer effective as of the date first above written.

CITY OF PFLUGERVILLE

Jeff Coleman, Mayor

ATTEST/SEAL:

Karen Thompson, City Secretary

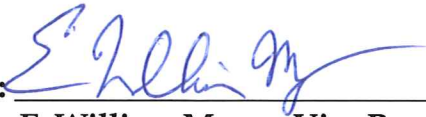
**REINVESTMENT ZONE NUMBER ONE,
CITY OF PFLUGERVILLE, TEXAS**

Mike Marsh, Chairman

ATTEST:

Karen Thompson, City Secretary

TERRABROOK FALCON POINTE, LLC

By: 
E. William Meyer, Vice President