



# City of Rowlett

## Official Copy

Resolution: RES-029-13

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

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH ARCADIA REALTY CORP., PERTAINING TO THE HOMESTEAD AT LIBERTY GROVE; 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 Arcadia Realty Corp., for the development of The Homestead at Liberty Grove, which, when completed, will involve the development and construction of utility infrastructure to serve a new community to be developed in accordance with the general neighborhood structure included in Exhibit A; and

**WHEREAS**, the Agreement provides for economic development incentives through waivers of impact fees up to a specified amount for the first three phases of the development; and

**WHEREAS**, the project is designed and will be constructed according to the City's recently-enacted Form Based Codes, and the successful development of the project, which would not occur in the absence of the fee waivers, 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 City Council of the City of Rowlett does hereby accept and approve the Economic Development Incentive Agreement attached hereto and incorporated herein, and does hereby further authorize the City Manager of the City of Rowlett, Texas, to execute the Agreement on the City's behalf.

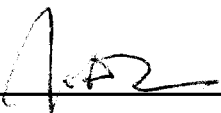
**Section 2:** This resolution shall take effect immediately upon its passage.

At a meeting of the City Council on March 5, 2013 this Resolution be adopted. The motion carried by the following vote:

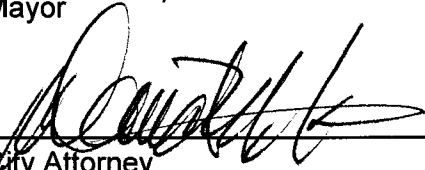
**Ayes: 5** Mayor Gottel, Mayor Pro Tem Phillips, Deputy Mayor Pro Tem Gallops, Councilmember Miller and Councilmember Kilgore

**Absent: 1** Councilmember Pankratz

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Approved by   
Mayor

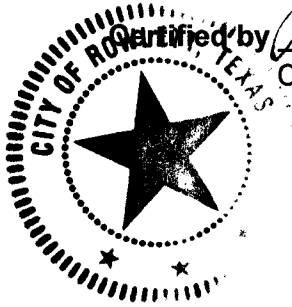
Date March 5, 2013

Approved to form by   
City Attorney

Date March 5, 2013

Certified by   
City Secretary

Date March 5, 2013



STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

This Economic Development Incentive Agreement (this “Agreement”) is entered into this 13 day of March, 2013 (the “Effective Date”) between the City of Rowlett, Texas, a Texas municipal corporation, (the “City”), and Arcadia Realty Corp., a Texas corporation, (“Arcadia Realty”), each acting by and through its duly authorized representatives.

**RECITALS**

**WHEREAS**, Arcadia, or its affiliated entity, owns certain land generally situated along the northern side of Liberty Grove Road to the west of Old Princeton Road and the Waterview subdivision consisting of 200 +/- acres described as The Homestead at Liberty Grove within the City of Rowlett, Texas (the “Property”), that intends to be improved by the construction of a single family residential community containing at least the 3 phases within the Woodside Living New Neighborhood Form Based District (the “Project”), to be developed in accordance with the general neighborhood structure shown in Exhibit A.; and

**WHEREAS**, the attraction of private investment and the diversification of 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**

**“Completion of Construction”** shall mean the date upon which the City accepts all Infrastructure for each separate Phase of the Project following its installation, construction, inspection, testing and final completion.

**“Comptroller’s Office”** shall mean the Comptroller of Public Accounts of the State of Texas.

**“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, shortages of labor or materials, war, adverse market conditions, governmental approvals, laws, regulations, or restrictions, or other cause beyond the control of the party.

**“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.

**“Phase of the Project”** means the single family lots and related infrastructure for each portion of the Project classified as Phase 1, 2 or 3 as generally described in Exhibit “A”, attached hereto and incorporated herein.

## **ARTICLE 2**

### **Economic Development Grant**

**2.1. Grant.** Subject to the terms, covenants and conditions of this Agreement, the City will make an economic development grant to Arcadia Realty, from lawfully available funds and provided there is no default hereunder, in an amount equivalent to the impact fees for water, wastewater (sewer) and roadway assessed by the City per each residential lot in phases one, two and three as per Exhibit A (the “Grant”). Fees shall not be waived, and no grant shall be allowed under this Agreement, for any future phases (4+) of the Project. In no event shall the aggregate Grant amount exceed \$2,573,000.00.

2.2 The Grant shall be paid to Arcadia Realty, or the affiliated entity that owns any Phase of the Project, by waiving fees (water impact fee, sewer impact fee and street/roadway impact fee) as and when each of the foregoing fees shall become due and payable in each of the first three (3) Phases of the Project. Notwithstanding the characterization of the grant as a waiver of fees, the nonpayment of such fees shall in all events and for all purposes be deemed to be a grant in accordance with the provisions of Chapter 380 of the Texas Local Government Code payable from any source of funds lawfully available to the City.

### **ARTICLE 3 Performance Obligations**

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

**3.1. Performance Criteria.**

- a) Arcadia Realty shall diligently pursue the development of the first three (3) Phases of the Project, subject to events of Force Majeure. Arcadia Realty or its affiliated entities shall apply for all permits required by applicable laws promptly following (i) execution of this Agreement and (ii) each of the first three (3) Phases of the Project must receive approval for the regulating plan (to establish overall site design, phasing, fire circulation and tree mitigation), development plan (to establish site design by phase, building articulation, landscaping, lighting and parking), civil engineering plan and plat by applicable Phase, and shall commence construction of Infrastructure for each applicable Phase diligently after regulating plan and plat approval for such applicable Phase.
- b) Arcadia Realty will achieve Completion of Construction, subject to events of force majeure for each of the first three (3) Phases of the Project, within ten (10) years from the Effective Date of this Agreement.

### **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 or Arcadia Realty if the other party 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 Arcadia Realty or an assignee or successor in interest fails to meet any one or more of the Performance Obligations identified in Article 3 above, and such failure is not remedied or cured within thirty (30) days after written notice thereof from the City;
- d) by the City if any taxes, fees or charges owed to the City, other than those specifically identified and waived herein, the County of Dallas, or the State of Texas by Arcadia Realty or an assignee or successor in interest shall have become delinquent (provided, however, Arcadia Realty retains the right to timely and properly protest and contest appraised values for ad valorem tax purposes), and such failure is not remedied or cured within thirty (30) days after written notice thereof from the City ;
- e) by the City if Arcadia Realty or an assignee or successor in interest suffers an Event of Bankruptcy or Insolvency; or
- f) by the City or by Arcadia Realty, 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. In the event that this Agreement is terminated as to any party prior to payment of the full allocation 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 Arcadia Realty or an assignee's or successor in interest's breach or failure to meet 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 Arcadia Realty, or if any fees have been waived, then Arcadia Realty or its assignee shall, immediately upon notice refund all amounts previously paid or waived; provided, however, Arcadia Realty or its assignee shall have no obligation to refund any portion of the Grant which is appropriately allocable to any Phase of the Project for which Completion of Construction for the Infrastructure for such phase of the Project has occurred.

## **ARTICLE 6**

### **Covenants, Representations, and Warranties**

**6.1** Separated Contracts. In developing and constructing the Project, Arcadia Realty will use reasonable efforts to encourage all contractors and vendors to use "separated contracts" (as that term is defined in Sec. 3.291 of the Texas Administrative Code), in order to maximize sales tax revenues to the City.

**6.2** Existence; Authority.

a) Arcadia Realty 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 obligations 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 Arcadia Realty, or any third party in connection with the development and improvement of the Project and the Project, and Arcadia Realty 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 neither party shall in any way be deemed an agent of the other. Arcadia Realty 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 Arcadia Realty, and Arcadia Realty 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 from the City for an assignment or transfer to an affiliate, parent or subsidiary of Arcadia Realty, 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 Arcadia Realty, to:

Arcadia Realty Corp.  
3500 Maple Avenue, Suite 1165  
Dallas, Texas 75219  
Attention: John Hodge

With a copy to:

Robert M. Allen  
Higier, Allen & Lauten, P.C.  
5057 Keller Springs Road, Suite 600  
Addison, Texas 75001



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.

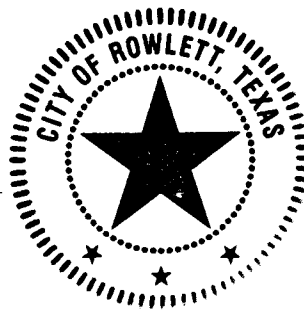
**EXECUTED** in single or multiple originals this the 13<sup>th</sup> day of March, 2013.

CITY OF ROWLETT, TEXAS

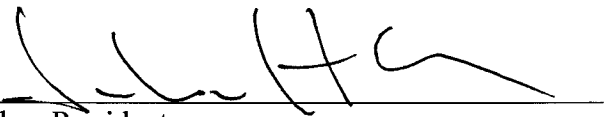
  
\_\_\_\_\_  
City Manager

ATTEST:

  
\_\_\_\_\_  
City Secretary



ARCADIA REALTY CORP.

By   
\_\_\_\_\_  
John Hodge, President