

**ECONOMIC DEVELOPMENT AGREEMENT**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF BRAZOS**       §

This Economic Development Agreement ("Agreement") is made by and between the CITY OF BRYAN, TEXAS, a Texas home-rule municipality ("City") and CROSSFULTON INVESTMENTS, LTD., a Texas limited partnership ("Developer").

**WITNESSETH:**

**WHEREAS**, the Constitution and laws of the State of Texas, including but not limited to Article III, Section 52-a of the Texas Constitution and Section 380.001, *et. seq.* of the Texas Local Government Code, authorize the City to enter into economic development agreements; and

**WHEREAS**, Developer owns or will own that certain tract of land in the City more particularly described on Exhibit "A" attached hereto and made a part hereof ("Property"), generally located near the northwest corner of the intersection of Harvey Mitchell Parkway (a/k/a FM 2818) and Villa Maria Road (a/k/a FM 1179); and

**WHEREAS**, Developer intends to develop a shopping center containing at least 200,000 gross square feet of retail and other commercial space on the Property; and

**WHEREAS**, Developer has advised the City that a contributing factor that would induce Developer to develop the Project (as herein defined) would be an agreement by the City to provide an economic development grant to Developer to incentivize development and construction of the Project; and

**WHEREAS**, Developer has further requested that the City reimburse a portion of the cost to construct public infrastructure, specifically a traffic signal at the intersection of Villa Maria Road and Jaguar Drive; and

**WHEREAS**, the Project is anticipated to result in construction jobs, permanent jobs, capital investment, ad valorem tax revenues to the City, and sales and use tax revenues to the City; and

**WHEREAS**, the City has determined that making an economic development grant to Developer in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants, and will benefit the local and regional economy; and

**WHEREAS**, such economic development grant is being paid to Developer for reimbursement of development costs as part of the City's economic development programs; and

**WHEREAS**, by resolution adopted on July 24, 2012, the City Council of the City authorized the execution and delivery this Agreement on behalf of the City.

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

## **ARTICLE I**

### **DEFINITIONS**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Affiliate" shall mean any entity that owns or controls, is owned or controlled by or is under common ownership or control with, Developer and/or Frank Liu or his immediate family, or any entity the ownership of which is substantially the same as the ownership of Developer, and/or which is not less than majority-owned by Frank Liu or his immediate family.

"Base Amount" shall mean the amount of the City's quarterly receipts from the State of Texas from the collection of the one and 50/100 percent (1.50%) sales and use tax imposed by the City, attributed solely to the collection of sales and use taxes generated from the sale of Taxable Items from the Walmart located at 2200 Briarcrest Drive, Bryan, Texas 77802, with respect to the fourth quarter of 2012, the first quarter of 2013, the second quarter of 2013 and the third quarter of 2013, as applicable.

"Briarcrest Offset" shall mean the positive difference, if any, between the Base Amount for the applicable quarter minus the Current Briarcrest Amount (*e.g.*, the Briarcrest Offset for the second quarter of 2015 would be the Base Amount for the second quarter of 2013 minus the Current Briarcrest Amount for the second quarter of 2015; and the Briarcrest Offset for the fourth quarter of 2015 would be the Base Amount for the fourth quarter of 2012 minus the Current Briarcrest Amount for the fourth quarter of 2015 [assuming in each case, the Base Amount is greater than the Current Briarcrest Amount; otherwise, the Briarcrest Offset would be zero]).

"Commencement of Construction" shall mean that (i) plans related to the Project have been prepared and submitted to the City by Developer; (ii) permits for construction to begin pursuant to such plans have been issued by the City; and (iii) bona fide grading on the Land has started. Developer will notify the City of the actual date upon which Commencement of Construction occurs.

"Completion of Construction" shall mean that one or more permanent certificates of occupancy have been issued for a Walmart in the Project consisting (individually) of at least 150,000 gross square feet. Developer will notify the City of the actual date upon which Completion of Construction occurs.

"Current Briarcrest Amount" shall mean, with respect to each and any quarter following the Completion of Construction, the amount of the City's receipts from the State of Texas from the collection of the one and 50/100 percent (1.50%) sales and use tax imposed by the City, attributed solely to such quarter's collection of sales and use taxes generated from the sale of Taxable Items from the Walmart located at 2200 Briarcrest Drive, Bryan, Texas 77802.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions, floods, adverse weather, materials or labor shortages, strikes, slowdowns or work stoppages.

"Hard Costs" shall mean the cost of labor, materials, and shall exclude soft costs such as the professional fees (engineers, planners, designers, attorneys, accountants, etc.) or other costs incidental to planning such as fees, permits, fines, or the costs to prepare designs, plats, plans, or surveys.

"Project" shall mean a shopping center containing at least 200,000 gross square feet of retail and other commercial space located on the Property, together with related improvements on the Property (including parking areas, landscaping, fencing, and fixtures) and infrastructure developed by Developer to serve the Property (regardless of whether such infrastructure is located on or off the Property).

"Property" shall collectively mean the real property described in Exhibit "A" and the Project.

"Sales Tax Percentage" shall mean (i) 75% for the period beginning upon the Effective Date and continuing through and until the end of the thirty sixth (36th) month after the month in which Completion of Construction occurs and (ii) 50% for the period beginning upon the start of the thirty seventh (37th) month after the month in which Completion of Construction occurs and continuing through and until the end of the Term.

"Sales Tax Receipts" shall mean the product of (x) the Sales Tax Percentage multiplied by (y) the amount of the City's receipts from the State of Texas from the collection of the one and 50/100 percent (1.50%) sales and use tax imposed by the City (it being expressly understood that the sales and use tax receipts are being used only as a measurement for the City's participation through the use of general funds), attributed solely to the collection of sales and use taxes generated from the sale of Taxable Items from businesses located on the Property. The term "Sales Tax Receipts" shall not include or consist of any other sales or use taxes imposed or collected by the City. The term "Sales Tax Receipts" shall not include or consist of sales tax revenue generated by a business that closed an existing location within City limits prior, or incidental, to opening a location on the Property.

"Taxable Item" shall have the same meaning assigned by Chapter 151, TEX. TAX CODE, as amended.

## **ARTICLE II**

### **TERM**

The term of this Agreement ("Term") shall begin on the last date of execution hereof ("Effective Date") and continue through and until the date that is fifteen (15) years after the end of the month in which Completion of Construction occurs, unless sooner terminated as provided herein.

## **ARTICLE III**

### **ECONOMIC DEVELOPMENT GRANT**

3.1 The City agrees to provide Developer with an economic development grant ("Grant") to reimburse a portion of the cost of design, development and construction of the Project in a total amount of \$5,000,000.00, subject to the terms hereof. This Grant is subject to annual appropriation by the City Council, the Grant is payable solely from lawfully available funds, and under no circumstances is this Grant to be deemed to create a debt within the meaning of any constitutional or statutory provision.

3.2 The Grant shall be paid in quarterly installments equal to the amount of Sales Tax Receipts for such quarter minus the amount of the Briarcrest Offset for such quarter, due within thirty (30) days after the City's receipt of both (a) payments of sales taxes from the State of Texas with respect to such quarter, and (b) retail sales tax reports submitted by the State of Texas, or sales tax certificates for each retail business located on the Property, with respect to such quarter. No interest on any grant payment shall accrue or be due.

3.3 The City and Developer designate this Agreement as a revenue sharing agreement, thereby entitling the City to request sales and use tax information from the Texas Comptroller of Public Accounts ("Comptroller"), pursuant to Section 321.3022 of the Texas Tax Code, as amended. The City shall request that the Comptroller issue sales tax reports pursuant to such section for total taxable sales consummated at the Property on a monthly basis ("Sales Tax Reports"). The City shall request that the Comptroller issue sales tax reports pursuant to such section for total taxable sales consummated at the Walmart located at 2200 Briarcrest Drive, Bryan, Texas 77802 on a monthly basis ("Briarcrest Reports"). In the event that the Comptroller determines that the City is not entitled to the Sales Tax Reports and/or the Briarcrest Reports, Developer is responsible for obtaining the necessary permission from businesses on forms provided by (or acceptable to) the Comptroller. To the extent allowed by law, the City shall promptly furnish Developer with a copy of each of the Sales Tax Reports and the Briarcrest Reports. Developer may furnish the City with any supplemental information regarding the amount of Sales Tax Receipts.

## **ARTICLE IV**

### **TRAFFIC SIGNAL**

4.1 The Developer shall, at its own cost, construct a traffic signal at the intersection of Villa Maria Road and Jaguar Drive ("Traffic Signal"). Developer agrees to obtain approval from the Texas Department of Transportation ("TxDOT") for the construction of the Traffic Signal.

4.2 The City agrees to provide an additional economic development grant in the form of reimbursement of the Hard Costs associated with the construction of the Traffic Signal. Following completion of the construction of the Traffic Signal, and acceptance of the work by TxDOT, or the City if TxDOT's acceptance is not required, the Developer shall submit invoices, receipts, or other written documentation of the Hard Costs to the City. The City agrees to reimburse the Developer up to \$250,000.00 for documented Hard Costs associated with the

construction of the Traffic Signal. The City shall submit payment to the Developer within thirty days of receiving the required documentation.

4.3 The City's obligation to provide this grant for reimbursement of Hard Costs associated with the construction of the Traffic Signal is subject to annual appropriation by the City Council out of lawfully available funds and in no way creates a debt within the meaning of any constitutional or statutory provision.

## **ARTICLE V**

### **CONDITIONS TO GRANT AND TERMINATION**

5.1 The City's obligation to pay the Grant and to reimburse the Hard Costs associated with the construction of the Traffic Signal shall be conditioned upon Developer's compliance and satisfaction of the following conditions:

(a) Commencement of Construction shall have occurred within two (2) years after the Effective Date, subject to events of Force Majeure; and

(b) Completion of Construction shall have occurred within eighteen (18) months after Commencement of Construction, subject to events of Force Majeure.

(c) The design and development of the Property must be in accordance with development standards outlined in the Planned Development – Business (PD-B) zoning district that was approved by the Bryan City Council in Ordinance No. 1963 on the 14<sup>th</sup> day of August, 2012.

5.2 This Agreement shall terminate upon any one of the following:

(a) by either party upon written notice to the other party if the other party breaches any of the terms of this Agreement and such breach is not cured within ninety (90) days after written notice thereof;

(b) by the City upon written notice to Developer if Developer fails to meet the conditions set forth in Section 5.1(a) and (b) above;

(c) upon payment of the final portion of the Grant totaling \$5,000,000 following reimbursement of Traffic Signal Hard Costs pursuant to Section 4.2 above; or

(d) the expiration of the Term.

5.3 Notwithstanding anything expressed or implied herein to the contrary, no event of default shall exist if the failure of Developer to fully perform its obligations hereunder is the result of a Force Majeure event. Further, the time for cure of a breach by Developer shall be extended by the reasonable time Developer is delayed by a Force Majeure event.

## ARTICLE VI

### MISCELLANEOUS

6.1 Assignment. Developer may assign this Agreement, in part or in whole, to any Affiliate without the approval of the City. Additionally, Developer may collaterally assign its rights and obligations under this Agreement, in part or in whole, to any financial institution or other lender without the approval of the City. Developer agrees to provide the City with notice of any assignment prior to the effective date of same, which notice shall specifically identify the identity of the person or entity authorized to accept notices and Grant payments under this Agreement. The City is not responsible to an assignee for Grant payments made to the assignor in the event that such notice is not timely given. Except for any financial institution or lender, Developer shall not assign this Agreement to any non-Affiliate without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The City shall not assign this Agreement without the prior written consent of Developer.

6.2 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto.

6.3 Limitation of Liability. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is understood and agreed between the parties that Developer, in satisfying the conditions of this Agreement, has acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. By executing this Agreement, the City is waiving its immunity from suit solely for the purpose of allowing enforcement of this Agreement, if necessary. No other waiver of immunity is provided by this Agreement. This Agreement is for the benefit of the signatories and in no way creates a right or cause of action for the benefit of any third party.

6.4 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted or assumed under this Agreement.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days after being sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received as set by courier or otherwise hand delivered.

If intended for the City, to:                      City of Bryan, Texas  
Attn: City Manager  
300 South Texas Avenue  
Bryan, Texas 77803

If intended for Developer:                      Crossfulton Investments, Ltd.  
Attn: Frank Liu or David Foor  
1520 Oliver Street  
Houston, Texas 77007

6.6 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 collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.7 Governing Law. This Agreement shall be governed by the laws of the State of Texas. The parties each irrevocably agrees that any legal proceeding in respect of this Agreement shall be brought in the district courts of Brazos County, Texas, or the United States District Court for the Southern District of Texas, Houston Division

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

6.9 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Rules of Usage. Any reference herein to "days" shall mean calendar days, and reference to "months" shall mean calendar months. Any reference herein to "quarters" shall mean the three (3) consecutive calendar month periods ending on each March 31st, June 30th, September 30th and December 31st. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. References to any gender include, unless the context otherwise requires, references to all genders. The words "shall" and "will" are mandatory, and the word "may" is permissive. Words used herein in the singular, where the context so permits, also include the plural and vice versa.

6.11 Recitals. The recitals to this Agreement are incorporated herein.

6.12 Counterparts. This Agreement may be executed in single or multiple counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.13 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.14 Further Assurances. Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

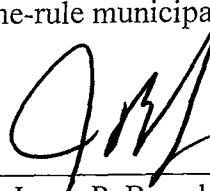
6.15 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

This Agreement is made to be effective as of the Effective Date.

CITY

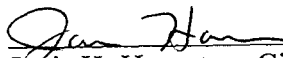
CITY OF BRYAN, TEXAS,  
a home-rule municipality

By: \_\_\_\_\_



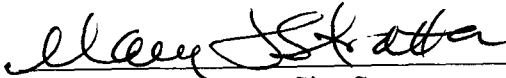
Jason P. Bienski, Mayor

Approved as to Form:



Janis K. Hampton, City Attorney

Attest:



Mary Lynne Stratta, City Secretary

Executed by the City on this 20th day of September, 2012.

DEVELOPER

CROSSFULTON INVESTMENTS, LTD.,  
a Texas limited partnership

By: CRL GP, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



HELEN GHAZALI

MANAGER

Executed by Developer on this 30th day of AUGUST, 2012.



## EXHIBIT "A"

### Land Description

BEING a 51.205 acre tract of land situated in the Zeno Phillips League, Abstract Number 45, Brazos County, Texas, in the City of Bryan, being all of the tract of land described in the deed to Johnny Foster Lyon recorded in Volume 1093, Page 342, Deed Records of Brazos County, Texas, and the tract of land described in the deed to Johnny Lyon recorded in Volume 3134, Page 271, Deed Records of Brazos County, Texas, and the tract of land described as Tract One in the deed to R. Coke Mills Trustee recorded in Volume 1215, Page 232, Deed Records of Brazos County, Texas, and the tract of land described in the deed to Kenneth R. Melber recorded in Volume 2628, Page 189, Deed Records of Brazos County, Texas, said 51.205 acre tract of land being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with a cap stamped "Dunaway Assoc LP" set in the westerly right-of-way line of F. M. 2818 (a variable width right-of-way) for the southeasterly corner of the tract of land described in the deed to Southwest Premier Properties, LLC recorded in Volume 3192, Page 310, Deed Records of Brazos County, Texas, also being the southeasterly corner of Lot 1, Block 1, Southwest Premier Addition, an addition to the City of Bryan according to the plat recorded in Volume 7246, Page 54, Plat Records of Brazos County, Texas;

THENCE with the westerly right-of-way line of F. M. 2818 the following:

South 33° 52' 36" West a distance of 289.72 feet to a 1/2 inch iron rod with a cap stamped "HP Mayo RPLS 5045" found for corner;

South 25° 17' 02" East at distance of 148.88 feet passing a Mag nail found in asphalt for the southeasterly corner of said Johnny Foster Lyon tract (Volume 1093 Page 342) continuing at a distance of 189.72 feet passing a 1/2 inch iron rod with a cap stamped "HP Mayo RPLS 5045" found for the northeasterly corner of said R. Coke Mills Trustee tract in all a total distance of 895.80 feet to the northeasterly corner of Lot 2, Cabo Subdivision, an addition to the City of Bryan according to the plat recorded in Volume 3720, Page 329, Plat Records of Brazos County, Texas, from which a found 5/8 inch iron rod bears North 62° 16' 37" East 0.34 feet;

THENCE departing the westerly right-of-way line of F. M. 2818 with the northwesterly line of said Lot 2 South 70° 25' 21" West a distance of 232.80 feet to a 5/8 inch iron rod with a cap stamped "Dunaway Assoc LP" set for the northwesterly corner of said Lot 2;

THENCE with the westerly line of said Lot 2 and Lot 1 of said Cabo Subdivision South 19° 40' 51" East a distance of 472.18 feet to a 5/8 inch iron rod with a cap stamped "Dunaway Assoc LP" set in the northerly right-of-way line of Villa Maria Road (a 100' wide right-of-way) as shown on the La Brisa Phase VII Street Right-of-Way Dedication Plat recorded in Volume 540 Page 347, Plat Records of Brazos County, Texas for the southwesterly corner of said Lot 1;

THENCE with the northerly right-of-way line of Villa Maria Road the following:

South 76° 19' 17" West at a distance of 521.38 feet passing a 1/2 inch iron rod with a cap stamped "RPLS 2859" found for the southeasterly corner of said Kenneth R. Melber tract in all a total distance of 658.47 feet to a 1/2 inch iron rod found for the point of curvature of a curve to the left having a radius of 1,854.28 feet;

Southwesterly along said curve through a central angle of 25° 00' 00" an arc distance of 809.08 feet with a chord bearing of South 63° 49' 17" West and a chord distance of 802.68 feet to a point at the end of said curve from which a found 1/2 inch iron rod bears North 21° 20' 28" West 0.89 feet;

South 51° 07' 45" West a distance of 180.55 feet to a 5/8 inch iron rod with a cap stamped "Kerr RPLS 4502" found the southeasterly corner of Lot 5, Block 15, Shirewood Addition Phase III, an addition to the City of Bryan according to the plat recorded in Volume 648, Page 245, Plat Records of Brazos County, Texas;

THENCE departing the northerly right-of-way line of Villa Maria Road with the easterly line of said Lot 5, Block 15 North 00° 43' 00" West a distance of 499.95 feet to a 5/8 inch iron rod with a cap stamped "Dunaway Assoc LP" set for corner;

THENCE departing the easterly line of said Lot 5, Block 15 North 62° 10' 59" East a distance of 89.27 feet to a 5/8 inch iron rod with a cap stamped "Dunaway Assoc LP" set for corner;

THENCE North 30° 22' 20" West a distance of 282.33 feet to a 1 inch iron pipe found in the easterly line of Shirewood Addition Phase IV, an addition to the City of Bryan according to the plat recorded in Volume 2377, Page 279, Plat Records of Brazos County, Texas for the southwesterly corner of said Johnny Lyon tract (Volume 3134 Page 271);

THENCE with the easterly line of said Shirewood Addition Phase IV North 47° 05' 11" West at a distance of 440.17 feet passing a 5/8 inch iron rod found for the common northerly corner of Lot 6 and Lot 7, Block 2 of said Shirewood Addition Phase IV in all a total distance of 490.05 feet to a 1/2 inch iron rod found in the southeasterly line of Carriage Hills Subdivision Phase Two an addition to the City of Bryan according to the plat recorded in Volume 2936, Page 313, Plat Records of Brazos County, Texas for the most northerly corner of said Shirewood Addition Phase IV;

THENCE departing the easterly line of said Shirewood Addition Phase IV with the southeasterly line of said Carriage Hills Subdivision Phase Two North 53° 18' 27" East at a distance of 469.45 feet passing the common southerly corner of said Carriage Hills Subdivision Phase Two and said Lot 1, Block 1, Southwest Premier Addition, continuing with the southeasterly line of said Lot 1, Block 1 at a distance of 1,190.21 feet passing a 5/8 inch iron rod with a cap stamped "Dunaway Assoc LP" set for the most westerly corner of said Johnny Foster Lyon tract (Volume 1093 Page 342), continuing with southeasterly line of said Lot 1, Block 1 in all a total distance of 1,803.19 feet to the POINT OF BEGINNING;

CONTAINING a computed area of 51.205 acres (2,230,503 square feet) of land.