



RESOLUTION NO. 2015-057

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING EXECUTION OF A RESIDENTIAL DEMOLITION/REBUILD PROGRAM INCENTIVE AGREEMENT FOR THE OWNER OF PROPERTY AT 3127 PEBBLE BEACH DRIVE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Farmers Branch has established a Residential Demolition/Rebuild Incentive Program pursuant to Chapter 380 of the Texas Local Government Code for the purpose of promoting the redevelopment of existing single family housing stock within the City (“the Incentive Program”); and

WHEREAS, the owner of the property generally located at 3127 Pebble Beach Drive has made application for the Incentive Program; and

WHEREAS, City Administration, having reviewed the foregoing application, has determined that the demolition and reconstruction of the residential structure on the above described property qualifies for the Incentive Program; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the execution of an agreement setting forth the terms and conditions by which the owner of the above-described property will receive the benefits of the Incentive Program.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. The City Manager is hereby authorized to execute on behalf of the City of Farmers Branch a Residential Demolition/Rebuild Program Incentive Agreement with Taco Properties, LLC, a Texas limited liability company, with respect to property generally known as 3127 Pebble Beach Drive, Farmers Branch, Texas 75234, substantially in the form set forth in Exhibit “A,” attached hereto and incorporated herein by reference.

SECTION 2. The City Manager has full authority to administer the above approved agreement on behalf of the City including, but not limited to, providing notices of default and termination as the City Manager may, from time to time, deem appropriate and necessary.

SECTION 3. This Resolution shall be effective immediately upon final passage.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS
BRANCH, TEXAS, THIS 16TH DAY OF JUNE, 2015.**

ATTEST:

APPROVED:

Angela Kelly, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(KBL:6-10-15:TM 71959)

Resolution No. 2015-057
Exhibit “A”

STATE OF TEXAS	§	
	§	RESIDENTIAL DEMOLITION/REBUILD PROGRAM
	§	INCENTIVE AGREEMENT
COUNTY OF DALLAS	§	

This **Residential Demolition/Rebuild Program Incentive Agreement** (“Agreement”) is made by and between the **City of Farmers Branch, Texas** (the “City”), and **Taco Properties, LLC**, a Texas limited liability company (the “Builder”), acting by and through their respective authorized officers and representatives. City and Builder are collectively referred to herein as “the Parties” and separately as “Party.”

WITNESSETH:

WHEREAS, Texas Local Government Code Chapter 380 allows the City to provide incentives for the promotion of economic development; and

WHEREAS, the promotion of the redevelopment of existing housing stock in the City promotes economic development within the City and is essential for the continued economic growth and vitality of the City; and

WHEREAS, it is well established that the availability of quality housing stock encourages the relocation of businesses and attracts new business enterprises, as well as the expansion of existing business enterprises within the City, which in turn stimulates growth, creates jobs and increases property and sales tax revenues; and

WHEREAS, the promotion of the housing stock is a major contributing factor to the growth of the City, which in turn stimulates trade and commerce and reduces unemployment; and

WHEREAS, residential development and redevelopment will attract and encourage business relocation and expansion since business will look to the available housing stock to meet the needs of management and the work force; and

WHEREAS, the City has determined that providing an economic development incentive in accordance with this Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the Builder is the owner of a one-family detached residential dwelling located at 3127 Pebble Beach Drive, Farmers Branch, Texas 75234 (hereinafter defined as the “Residence”); and

WHEREAS, the Builder intends to demolish the Residence, construct a new one-family detached residential dwelling (hereinafter defined as the “New Residence”), and sell the Land with the New Residence to the Resident Owner; and

WHEREAS, the Builder has been approved as an eligible participant and the demolition of the Residence and the construction of the New Residence has been approved as an eligible project (hereinafter defined as an “Approved Project”) under the City Demolition/Rebuild Property Tax Incentive Program (hereinafter defined as a “Program”);

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article II Definitions

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

“Annual Incentive(s)” shall mean seven (7) annual economic development incentives each in an amount equal to one hundred percent (100%) of the difference between the ad valorem taxes assessed by the City against the New Residence for the applicable tax year and paid to the City, and the amount of ad valorem taxes assessed by the City against the Residence for the Base Year and paid to the City, as calculated and determined by the City, to be paid to the Resident Owner as set forth herein.

“Approved Project” shall mean the approval of the demolition of the Residence and the construction of the New Residence as an approved project by the City as being eligible for the incentives under the Program.

“Base Year” shall mean January 1 of the calendar year immediately preceding the date of approval of the Project.

“Builder” shall mean the owner of the Residence.

“City” shall mean the City of Farmers Branch, Texas.

“Commencement Date” shall mean the later of (i) the date the City issues a certificate of occupancy or certificate of completion for the New Residence and (ii) the date fee simple title to

the New Residence and Land are conveyed by the Builder to the Resident Owner and this Agreement has been assigned to the Resident Owner pursuant to Section 6.1, below.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for the Approved Project; and (ii) all necessary permits for the construction of the Approved Project have been issued by all applicable governmental authorities.

“Completion of Construction” shall mean that (i) substantial completion of construction of the New Residence has occurred; and (ii) the City has issued a final certificate of occupancy of certificate of inspection for the Approved Project.

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

“Event of Bankruptcy or Insolvency” shall mean insolvency, appointment of receiver for the Builder or Resident Owner and such appointment is not terminated within ninety (90) 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 the Builder or Resident Owner and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Expiration Date” shall mean April 1 of the first full calendar year following the 8th anniversary of the Commencement Date.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Builder or Resident Owner or any property or any business owned by Builder or the Resident Owner within the City.

“Land” shall mean the real property located in the City of Farmers Branch, Texas, on which the Residence is located, but excluding any improvements, which property is described as Lot 4, in Block A, of Brookhaven Hills West, an Addition to the City of Farmers Branch, Dallas County, Texas, according to the Map thereof recorded in Volume 296, Page 1079, of the Map Records of Dallas County, Texas.

“New Residence” shall mean a new one family detached dwelling to be constructed on the Land, as approved by the City as an Approved Project, excluding the Land.

“Payment Request” shall mean (a) with respect to the incentive grant paid pursuant to Section 3.1, below, a written request from the Resident Owner to be submitted to the City on or before April 1 of each calendar year for the payment of the Annual Incentive accompanied by a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for the preceding tax year have been paid in full, and such other information as the City may reasonably request and (b) with respect to the Demolition Grant, a written request from the Builder submitted to the City requesting payment of the Demolition Grant accompanied by (i) a

copy of the written contract(s) between the Builder and third parties engaged in the demolition of the Residence, invoices related to the payment of permit fees, utility fees, charges for other goods, materials, and services related to demolition and removal of the Residence from the Land, proof of payment made by the Builder (e.g. copies of cancelled checks) for the fees and charges for which the Builder seeks reimbursement, and such other information as the City may reasonably request to verify the Builder's right for reimbursement.

"Project" shall mean the demolition of the Residence and the construction of the New Residence on the Land.

"Residence" shall mean the existing one family detached dwelling located the Land at the time of approval of the Approved Project by the City.

"Residential Demolition/Rebuild Program" shall mean the City of Farmers Branch Residential Demolition/Rebuild Incentive Program adopted by Resolution of the City Council, as amended.

"Resident Owner" shall mean the person or people to whom the Builder sells the New Residence and Land and who will occupy the New Residence and Land as a residential homestead.

"Taxable Value" shall mean the appraised value of the Residence or the New Residence, as the case may be, as certified by the Dallas Central Appraisal District, or its successor entity, as of January 1 of a given year. The Parties agree that, as of the Effective Date, the Taxable Value of the Residence is \$98,880.00.

Article III

Economic Development Incentive

3.1 Payment. Upon assignment of this Agreement by the Builder to the Resident Owner following Completion of Construction, and subject to the Resident Owner's continued satisfaction of the terms and conditions of this Agreement and the obligation of the Resident Owner to repay the Annual Incentives pursuant to Section 5.2 hereof, the City agrees to provide the Annual Incentives to the Resident Owner to be paid within thirty (30) days after City receipt of the applicable Payment Request following April 1 of each calendar year, beginning April 1 of the calendar year immediately following the Commencement Date, provided the City has timely received the ad valorem taxes assessed against the Land and the New Residence in full for the respective tax year. The Resident Owner shall submit a Payment Request to the City on or before April 1 of each calendar year for the applicable Annual Incentive. For example, assume, for illustration purposes only, that (i) a Project was approved by the City in 2011 (making 2011 the Base Year), (ii) the City taxes assessed and paid for the Residence (improvements excluding the Land) for 2011 was \$1,000, (iii) Completion of Construction of the New Residence was June 1, 2012, and (iv) the New Residence and Land are conveyed by warranty deed to the Resident Owner on July 1, 2012. Based on the foregoing, the Commencement Date would be July 1, 2012. Further assume that the City taxes assessed against the New Residence (improvements excluding the Land) paid by the Resident Owner for tax year 2013 (due on or before January 31,

2014) is \$2,000. Then the first Annual Incentive would be for the difference in the City taxes assessed the New Residence for tax year 2013 in the amount of \$2,000 and the amount of City taxes assessed for the Base Year (2011) of \$1,000 resulting in an Incentive of \$1,000 that would be paid within thirty (30) days after City receipt of the applicable Payment Request following April 1, 2014 provided the Resident Owner submitted a Payment Request on or before April 1, 2014 which included a tax receipt showing that the ad valorem taxes assessed against the Land and the New Residence for tax year 2013 have been paid in full.

3.2 Current Revenue. The Annual Incentives made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

3.3 Payment of Demolition Grant. The City agrees to pay the Demolition Grant to the Builder not later than thirty (30) days after receipt of a Payment Request for reimbursement for the Demolition Costs, which shall in no case be earlier than thirty (30) days after the Commencement of Construction of the New Residence. Notwithstanding the foregoing, the City shall not be required to pay the Demolition Grant if Commencement of Construction of the New Residence has not occurred on or before twelve (12) months after completion of demolition of the Residence. In no case shall the Demolition Grant exceed the lesser of (a) the Demolition Costs and (b) \$5000.00. In reviewing the Payment Request for the Demolition Costs, the City shall be the final determiner as to whether a cost submitted for reimbursement is related to the demolition of the Residence.

Article IV Incentive Conditions

The City's obligation to pay the Annual Incentives shall be conditioned upon the Resident Owner's continued compliance with and satisfaction of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

4.1 Inspections. The Builder agrees to submit to periodic inspections of the Approved Project by the City during the period beginning with the date of Commencement of Construction and ending on date of Completion of Construction.

4.2 Construction of the Approved Project. The Builder shall, subject to Events of Force Majeure which are shown by sufficient evidence provided to the City to have prevented work to occur on the New Residence after Commencement of Construction, cause Completion of Construction of the Approved Project to occur on or before twenty-four (24) calendar months after the date of City approval of the Effective Date.

Article V Termination

5.1 This Agreement shall terminate upon the occurrence of any one of the following:

- (a) mutual agreement of the parties;
- (b) the Expiration Date;
- (c) by the City, if any Impositions owed to the City or the State of Texas by the Builder or the Resident Owner shall become delinquent (provided, however, the Builder and the Resident Owner shall have the right to timely and properly protest and contest any such Impositions);
- (d) by the City, in the event the Builder or the Resident Owner breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof;
- (e) by City, if the Builder or the Resident Owner suffers an Event of Bankruptcy or Insolvency;
- (f) by City, if, subject to Force Majeure, Commencement of Construction of the New Residence has not occurred within twelve (12) months after demolition and removal of the Residence from the Land;
- (g) by City, if any subsequent Federal or State legislation or any final, non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; or
- (h) the sale or transfer of the Residence.

5.2 In the event of termination by the City pursuant to 5.1(c), (d), (e), (g), or (h), the Property Owner shall immediately repay to the City an amount equal to the total amount of Incentives paid to Property Owner, if any, prior to termination of this Agreement. If the City terminates this Agreement pursuant to Section 5.1(d) because Completion of Construction of the New Residence has not occurred within the time required by Section 4.2, above, the Builder shall, upon demand, reimburse the City the amount of the Demolition Grant paid to the Builder.

Article VI Miscellaneous

6.1 Assignment. Except as provided herein, this Agreement may not be assigned without the prior written consent of the City. This Agreement may be assigned by Builder to the Resident Owner following Completion of Construction and conveyance of fee simple title by the Builder to the Resident Owner without the consent of the City; provided, however, such assignment shall not be effective and binding on the City, and the City shall not be obligated to pay the Annual Incentives, unless and until (i) the Builder and Resident Owner have signed the "Assignment of Agreement" clause following the signatures of the City and the Builder, below, (ii) a copy of this agreement with the signed Assignment of Agreement clause, a copy of the recorded warranty deed (general or special) showing conveyance of the title to the New Residence and Land has been conveyed to the Resident Owner, evidence that the Resident Owner is using the New Residence as the Resident Owner's residential homestead, and the name and address of the Resident Owner to where notices under this Agreement shall be sent have

been delivered to the City. This Agreement shall automatically terminate upon (i) any subsequent sale or transfer of the ownership of the Residence prior Completion of Construction and (ii) and subsequent sale or transfer of ownership of the New Residence by the Resident Owner.

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

6.3 Limitation on Liability. It is understood and agreed between the Parties that the Builder and Resident Owner, as the case may be, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.4 No Joint Venture. 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.

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

6.6 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three days thereafter 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 if sent by courier or otherwise hand delivered.

If intended for Builder, to:

Taco Properties, LLC
Attn: Travis Tadlock
202 Laverne Terrace
Georgetown, Texas 78628

If intended for City, to:

Attn: City Manager
City of Farmers Branch, Texas
13000 William Dodson Pkwy.
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

6.7 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 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.

6.8 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

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

6.10 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 that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall 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.

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

6.12 Counterparts. This Agreement may be executed in 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 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.

6.14 Employment of Undocumented Workers. During the term of this Agreement, the Builder and the Resident Owner agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Builder or the Resident Owner, as the case may be, shall repay the amount of the Annual Incentives and any other funds received by the Builder or the Resident Owner, as the case may be, from the City as of the date of such violation within one hundred twenty (120) days after the date the Builder or the Resident Owner, whichever is applicable, is notified by the City of such violation, plus interest at the rate of four percent (4.0%) compounded annually from the date of violation until paid. The Builder and the Resident Owner are not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Builder or the Resident Owner or by a person with whom the Company contracts.

6.15 Future Incentives. The Builder and Resident Owner understand, acknowledge, and agree that the residence at 3127 Pebble Beach Drive, Farmers Branch, Texas 75234, will not

be eligible for any other or further residential or other incentive offer now or hereafter by the City.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2015.


City of Farmers Branch, Texas

By: _____
Gary D. Greer, City Manager

Attest:

By: _____
Angela Kelly, City Secretary

Approved As To Form:

By: 
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2015.

BUILDER:

**Taco Properties, LLC, a Texas limited liability
company**

By: _____
Travis Tadlock, Managing Member

ASSIGNMENT OF AGEEMENT

Taco Properties, LLC, (“Builder”) does hereby assign all of its rights, responsibilities and obligations under the foregoing **Residential Demolition/Rebuild Program Incentive Agreement** (“the Agreement”) to _____

_____ (insert full names of all Resident Owners) (collectively “Resident Owner”) and Resident Owner does hereby expressly assume all the rights, duties, responsibilities and obligations of Builder set forth in the Agreement, effective as of the date of closing of the sale and conveyance of title of the New Residence and Land to Resident Owner (the “Assignment Effective Date”), but only to the extent such responsibilities, obligations and duties first arise and relate to periods after the Assignment Effective Date; provided, Builder shall remain responsible for, and Resident Owner is not assuming, any obligations or duties of Builder under the Agreement which relate to an event, matter or circumstance that occurred prior to the Assignment Effective Date, even though such obligations or duties do not accrue until after the Assignment Effective Date. Builder represents that, as of the Assignment Effective Date, the Agreement is in full force and effect and there are no uncured defaults under the Agreement.

SIGNED AND AGREED by **BUILDER** this ____ day of _____, 201__.

Taco Properties, LLC, a Texas limited liability company

By: _____
Travis Tadlock, Managing Member

SIGNED AND AGREED by **RESIDENT OWNER** this ____ day of _____, 201__.

Printed Name: _____

Printed Name: _____