
SPECIAL ECONOMIC DEVELOPMENT GRANT AGREEMENT

Effective Date: September 16, 2011

by

CITY OF FOLEY, ALABAMA

and

COROC/RIVIERA L.L.C.

This Special Economic Development Grant Agreement was prepared by Heyward C. Hosch of Maynard, Cooper & Gale, P.C., 1901 Sixth Avenue North, 2400 Regions/Harbert Plaza, Birmingham, Alabama 35203.

SPECIAL ECONOMIC DEVELOPMENT GRANT AGREEMENT

September 16, 2011

This **SPECIAL ECONOMIC DEVELOPMENT GRANT AGREEMENT** is made and entered as of the above date by the **CITY OF FOLEY, ALABAMA**, an Alabama municipal corporation (the "City"), and **COROC/RIVIERA L.L.C.** (the "Owner").

Recitals

The Owner is the owner and operator of Tanger Outlet Mall – Foley within the City. The operation of Tanger Outlet Mall – Foley contributes significantly to the tax and revenue base of the City and employment opportunities in the City. The economic vitality of Tanger Outlet Mall – Foley is of direct financial benefit to the taxpayers and citizens of the City.

At the request of the Owner, the City has agreed to provide the Owner, as provided herein, the within referenced City Economic Development Funds in consideration, and for the purpose, of the recruitment of tenants for, and the general advertisement of, Tanger Outlet Mall – Foley.

Pursuant to the applicable laws of the State of Alabama referenced herein, for the purposes referenced herein, the City and the Owner have delivered this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the City and the Owner hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following terms shall have the following meanings:

Advertising Expenses shall mean amounts to be spent by the Owner for attracting customers of Tanger Outlet Mall – Foley, by advertising in any and all forms of media, including without limitation television, radio, newspaper, print media, direct mail, billboards, and internet advertisements.

Approved Expenses shall mean amounts which shall have been proposed by the Owner to be spent for Qualified Expenses pursuant to Section 4.01 and which shall have been approved in advance therefor by the City pursuant to Article 5(a).

Calendar Quarter shall mean each period of three consecutive calendar months ending on March 31, June 30, September 30, and December 31 in each year, respectively.

City Economic Development Funds shall mean the amounts transferred by the City to the Owner pursuant to Article 5(d) for Qualified Expenses.

City Project Fees shall mean an amount equal to twenty-five percent (25%) of the Net Project User Fees.

District shall mean The City of Foley Public Facilities Cooperative District and its successors and assigns.

Effective Date shall mean the date of delivery hereof as set forth on the cover page hereof.

Enabling Law shall mean Amendment No. 750 of the Constitution of Alabama of 1901, as amended.

Lease Agreement shall mean that certain Lease Agreement dated September 1, 2009, by the District and the City with respect to the Project and other public facilities referenced therein, recorded as Instrument Number 1201725 in the Office of the Judge of Probate of Baldwin County, Alabama.

Net Project User Fees shall mean that amount of Project User Fees which shall have been received by the City and deposited in the Project User Fee Account, less all amounts deducted therefrom and retained by the City as payment of costs of collection thereof, which costs are ten dollars (\$10.00) per calendar month for each account.

Owner shall mean COROC/Riviera L.L.C. , and the successors and assigns thereof.

Project Area shall mean the area described on Exhibit A hereto.

Project User Fees shall mean the Project User Fees levied and collected by the District within the Project Area pursuant to Resolution duly adopted thereby on July 18, 2011.

Project User Fee Account shall mean a fund or account, or other accounting, established by the City, on behalf of the District, to hold proceeds of the Net Project User Fees.

Qualified Expenses shall mean and include collectively Tenant Recruitment Expenses and Advertising Expenses.

Quarterly Accounting Date shall mean the tenth (10) day of the second month of a Calendar Quarter.

Tanger Project Fees shall mean an amount equal to seventy-five percent (75%) of the Net Project User Fees.

Tenant Recruitment Expenses shall mean amounts to be spent by the Owner for the recruitment of retail tenants to Tanger Outlet Mall – Foley which are of a caliber, character and quality consistent with the public mission of the Owner as a real estate investment trust, and which amounts may include (but shall not be limited to) costs incurred with respect to incentives for tenants and retaining or relocating tenants.

Termination Date shall have the meaning assigned in Article 3.

Validation Date shall mean September 16, 2011, being that date on which a judgment entered by the Circuit Court of Baldwin County, Alabama validating and confirming the Project User Fees shall have become forever conclusive in accordance with, and as provided in, Section 11-81-220 et seq. of the Code of Alabama 1975.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.01 The City

The City hereby represents as follows:

(1) The City has corporate power and authority to enter into this Agreement, pursuant to the Enabling Law, and to carry out its obligations hereunder and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.

(2) The delivery of this Agreement will result in direct financial benefits to the City.

SECTION 2.02 The Owner

The Owner hereby represents as follows:

(1) The Owner has corporate power and authority to enter into this Agreement and to carry out its obligations hereunder and by proper corporate action the Owner has duly authorized the execution, delivery and performance of this Agreement.

- (2) The delivery of this Agreement will result in direct financial benefits to the Owner.

ARTICLE 3

DURATION OF AGREEMENT

This Agreement and the obligations of the City and the Owner herein shall become effective on the Effective Date and shall remain in effect until the first to occur of any of the following (the "Termination Date"), except with respect to any provision or term herein which expressly remains in effect from and after the Termination Date:

(a) the date on which this Agreement shall be terminated by either party hereto pursuant to Section 6.02(a); or

(b) November 10, 2018 (being the Quarterly Accounting Date which next succeeds the second anniversary of the Validation Date); provided, however,

(i) upon the written request of the Owner not less than 90 days prior to the date specified in Article 3(b), and if no Event of Default shall have occurred and be continuing, the City may, in its discretion and upon such terms as the City shall then require, agree that this Agreement shall continue in force and effect until November 10, 2015 (being the Quarterly Accounting Date which next succeeds the fourth anniversary of the Validation Date); and

(ii) upon the written request of the Owner not less than 90 days prior to the date specified in Article 3(b)(i), and if no Event of Default shall have occurred and be continuing, the City may, in its discretion and upon such terms as the City shall then require, agree that this Agreement shall continue in force and effect until November 10, 2017 (being the Quarterly Accounting Date which next succeeds the sixth anniversary of the Validation Date).

ARTICLE 4

AGREEMENTS AND OBLIGATIONS OF THE OWNER

SECTION 4.01 Quarterly Reports and Reimbursement Requests

The Owner hereby covenants and agrees:

(a) Quarterly Reports. The Owner shall provide to the City, on or before each Quarterly Accounting Date, in form and of content satisfactory to the City, an accounting, budget, or report setting forth:

- (1) for the then immediately preceding Calendar Quarter:

(i) the amounts spent by the Owner from the funds thereof for Qualified Expenses,

(ii) the amounts, if any, spent by the Owner from City Economic Development Funds for Qualified Expenses, and

(2) for the then next succeeding Calendar Quarter, the amounts to be spent by the Owner from funds thereof for Qualified Expenses, which amounts shall include any Approved Expenses.

(b) Reimbursement Requests. The Owner may provide to the City, on or before each Quarterly Accounting Date, a written request, in form and of content satisfactory thereto, for reimbursement of certain amounts set forth in Section 4.01(a)(1)(i), subject to each of the provisions of Section 4.03 with respect thereto.

SECTION 4.02 Application of City Economic Development Funds

The Owner covenants and agrees that all City Economic Development Funds received by the Owner hereunder shall be applied solely to the payment of Qualified Expenses and shall be so identified to the City pursuant to Section 4.01(a)(1).

SECTION 4.03 Nature, Amount and Duration of Payment Obligation of City

The Owner covenants and agrees:

(a) Limited Obligation. The obligation of the City for the payment of any amount to the Owner under this Agreement:

(1) is a limited obligation payable solely from, and limited to an amount not more than, that amount of Tanger Project Fees which are held in the Project User Fee Account;

(2) shall never constitute a general obligation, or a charge against the general credit or taxing powers, of the City within the meaning of any constitutional provision or statutory limitation whatsoever; and

(3) the law-imposed requirement that, if necessary, there must first be paid from all Net Project User Fees the legitimate and necessary governmental expenses of operating the City.

(b) Payments by City. The payment by the City of any amount under this Agreement:

(1) is subject to the prior written approval of the Mayor and the Treasurer of the City, in the exercise of the sole reasonable discretion thereof;

(2) may be made by the City at any time within 30 days after delivery by the Owner of the information, and request for payment of City Economic Development Funds, required by Article 4 hereof; and

(3) is limited to one payment or transfer of City Economic Development Funds to the Owner in each Calendar Quarter.

(c) Termination of Payment Obligation. The City shall have no obligation to pay any amount under this Agreement from and after:

- (1) the occurrence of an Event of Default under Section 6.01(b), and
- (2) the Termination Date, except as provided in Article 5(e).

(d) Project User Fees Arising after Termination Date to City. All proceeds of the Project User Fees arising after the Termination Date (except as provided in Section 4.03(c)(2)) shall be and remain the sole property of the City and the Owner shall have no right, title or interest therein.

SECTION 4.04 Cooperation and Consultation with the City.

The Owner covenants and agrees to fully cooperate and consult with the economic development office of the City with respect to the determination of Qualified Expenses and the recruitment of tenants, and the advertising program, for Tanger Outlet Mall – Foley.

SECTION 4.05 Identification of Project User Fees

The Owner covenants and agrees:

(a) The Owner shall deliver to each Project User Fee Payer at least once each year written instructions with respect to the collection and purpose of the Project User Fees;

(b) The Owner shall require each Project User Fee Payer, to the extent permitted by the point of sale system thereof, to distinguish the Project User Fees from a sales or other tax, and to separately identify, on each sales tax receipt, the Project User Fee either as a "Temp. User Fee" or by other legend or description approved by the Owner.

ARTICLE 5

AGREEMENTS AND OBLIGATIONS OF THE CITY

The City covenants and agrees:

(a) Approved Expenses. The City shall, upon request by the Owner and the provision to the City of such information as the City shall reasonably request, approve in advance any proposed Qualified Expenses, which approval shall be delivered in writing by the Mayor and Mayor Pro Tempore of the City.

(b) Collection of Project User Fees. The City shall cause the Project User Fees to be levied and collected by the District as provided by law from and after the Validation Date.

(c) Project User Fee Account. The City shall cause the Net Project User Fees to be held in the Project User Fee Account, invested as provided for general funds of the City, and applied, together with investment earnings thereon, in accordance with this Agreement. The City shall, upon written request by the Owner, notify the Owner of the amount on deposit in, or credited to, the Project User Fee Account.

(d) Review of Quarterly Reports and Payment of City Economic Development Funds. During the period beginning on the Effective Date and ending on the Termination Date, the City shall review all information provided by the Owner under Section 4.01 and within 30 days of each Quarterly Accounting Date:

(1) request any additional information needed by the City to perform this Agreement, or

(2) transfer to the Owner, solely from amounts on deposit in the Project User Fee Account, subject to and in accordance with the provisions of Section 4.03 with respect thereto, the lesser of:

(i) the amount approved by the City, or

(ii) the amount requested by the Owner, or

(iii) the amount of Tanger Project Fees on deposit in the Project User Fee Account.

(e) During the period beginning on the Termination Date and ending on the first anniversary thereof, the City shall, anything in this Agreement to the contrary notwithstanding, transfer to the Owner, solely from amounts on deposit in the Project User Fee Account, the amount of Tanger Project Fees which are on deposit in the Project User Fee Account on the Termination Date and which the Owner shall properly request and the City shall agree to pay, subject to the provisions of Section 4.03 with respect thereto.

(f) The City shall cause the City Project Fees to be used for the Project as provided in Section 4.03 of the Lease Agreement, including without limitation construction and maintenance of public roads, streets, bridges, sidewalks, bike paths, drainage, lighting, and landscaping to provide for safe and efficient public travel in the City and around the Tanger Outlet Mall area.

ARTICLE 6

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01 Events of Default

Any one or more of the following shall constitute an event of default by the City or the Owner hereunder (an "Event of Default") under this Agreement:

(a) default in the performance, or breach, of any covenant or warranty of the City in this Agreement, and the continuance of such default or breach for a period of 30

days after there has been given, by registered or certified mail, to the City by the Owner a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the City shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or

(b) default in the performance, or breach, of any covenant or warranty of the Owner in this Agreement, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Owner by the City a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Owner shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.

SECTION 6.02 Remedies

(a) Each party may, upon the occurrence of an Event of Default and the expiration of any cure or grace period therefor, by written notice to the other party, terminate this Agreement and the obligations thereof without recourse except with respect to such rights or obligations as shall have theretofore vested.

(b) Each party hereto may proceed to protect its rights and interests by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of any other party herein contained or in aid of the exercise of any power or remedy available at law or in equity.

SECTION 6.03 Remedies Subject to Applicable Law

All rights, remedies and powers provided by this Agreement may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE 7

PROVISIONS OF GENERAL APPLICATION

SECTION 7.01 Enforceability

The provisions of this Agreement shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

SECTION 7.02 Prior Agreements Cancelled

This Agreement shall completely and fully supersede all other prior agreements, both written and oral, by the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

SECTION 7.03 Counterparts

This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

SECTION 7.04 Binding Effect; Governing Law

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein.

(b) This Agreement shall be governed exclusively by the laws of the State of Alabama.

SECTION 7.05 Notices

(a) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

(1) if to the City:

City Hall
407 East Laurel Avenue
Foley, Alabama

(2) if to the Owner:

COROC/Riviera, L.L.C.
3200 Northline Avenue, Suite 360
Greensboro, North Carolina 27408
Attn: Frank C. Marchisello, Jr.

(b) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

SECTION 7.06 Delegation and Assignment of this Agreement

(a) The City shall have no authority or power to, and shall not, delegate to any Person the duty or obligation to observe or perform any agreement or obligation of the City hereunder.

(b) The City shall not have any authority or power to, and shall not, assign to any Person any right of the City hereunder or any interest of the City herein.

(c) The Owner may, with notice to, and without consent of, the City, assign to any Person or Persons any or all of its rights, title and interest herein.

SECTION 7.07 Amendments

This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and the Owner has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.



ATTEST: *Lickey Southern*
City Clerk

CITY OF FOLEY, ALABAMA

By

[Signature]
Mayor

COROC/RIVIERA L.L.C.

By

[Signature]
Frank C. Marchisello, Jr.

Its

Vice President

EXHIBIT A

Project Area

The commercial facilities and properties of COROC/Riviera L.L.C. located on Highway 59 in the City, which consist of an approximately 550,000 square foot retail shopping center known as "Tanger Outlet Mall – Foley".