

INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF EAST RIDGE MEETING:

SPECIAL MEETING AGENDA



June 25, 2014

5:00 p.m.

1. Call to Order
2. Prayer & Pledge of Allegiance
3. Roll Call
4. Old Business:
 - a. Action/Discussion on Development and Allocation Agreement Relating to Border
Region Retail Development District
5. New Business:
6. Other Business
7. Announcements
8. Adjourn

BASS, BERRY & SIMS PLC

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900 S. Gay Street
Knoxville, TN 37902
(865) 521-6200

M E M O R A N D U M

TO: Directors of The Industrial Development Board of the City of East Ridge

FROM: G. Mark Mamantov

DATE: June 24, 2014

RE: Proposed Development and Allocation Agreement

This memorandum accompanies a proposed Development and Allocation Agreement Relating to Border Region Retail Development District (the "Agreement") between The Industrial Development Board of the City of East Ridge (the "IDB") and Exit One LLC (the "Developer"). As you will recall, the Developer's counsel prepared an initial draft of this document. I substantially edited that draft and provided a copy of my edited version to the Developer's counsel. While he and I are in agreement on a number of issues raised by the Agreement, there are two substantive issues on which we are not in agreement. Those two issues are briefly discussed below. It was my understanding, based upon the discussions at the last meeting of the IDB, that the IDB wanted me to provide a draft of an agreement that I could recommend for approval. I would recommend approval of the draft of the Agreement that accompanies this memorandum. While this draft certainly is not perfect, and reflects some give and take by both parties, I believe it is an agreement that is reasonable to both sides and includes reasonable protections for the IDB.

The proposed Agreement accomplishes the primary goal that the Developer asked the IDB to achieve. The proposed Agreement would commit the IDB to reimburse the Developer for costs incurred in the fiscal year that will end on June 30th provided that the conditions to reimbursement, which are to be negotiated in a future incentive agreement among the IDB, the Developer and the City of East Ridge (the "City"), are met. As was discussed at the last IDB meeting, since we do not yet have adequate information to negotiate and complete the incentive agreement at this point, the proposed Agreement serves as an interim measure until the terms of the future incentive agreement can be finalized.

This Agreement includes the standard protections that the IDB should request in an Agreement of this type. Most importantly, this Agreement specially provides that none of the directors of the IDB has any personal liability for the IDB's obligations under the Agreement. Also, the IDB's liability under the Agreement is limited to the state sales and use tax revenues allocated to the IDB and not any other assets of the IDB. Also, the Developer agrees, in the proposed Agreement, to indemnify the IDB for any claims that may arise that relate to the Agreement unless due to a default under the Agreement by the IDB. Also, the proposed Agreement specifically provides that the City has no responsibility for the IDB's obligations under the Agreement.

As mentioned above, there were two primary substantive issues on which I could not reach Agreement with the Developer's counsel. First, the Developer's requested significantly different language from what I have proposed regarding the conditions that would need to be met for the disbursement of state tax revenues to the Developer. In this regard, what I have proposed is exactly what I discussed with

the IDB at its recent meeting. The disbursement would occur once the conditions to disbursement, which will need to be negotiated in the incentive agreement, are met. The language that the Developer's counsel suggested is too vague, in my opinion, and could result in a premature disbursement to the Developer.

The other substantive issue under discussion is a little more complex to describe and requires reference back to the resolution that the City Council adopted indicating its support for this project. As you may recall, I assisted the City in negotiating the form of that resolution. As those negotiations progressed, the parties were in agreement that the City would allocate in support of the project the incremental state tax revenues from the extraordinary retail facility proposed by the Developer as well as the incremental state tax revenues resulting the first \$10 million in incremental sales in the Border Region District, even though the Developer had no role in creating such sales. Toward the end of the negotiations, the Developer asked that it also be entitled to get the benefit of the state tax revenues resulting from any additional development that it or an affiliate may undertake in the Border Region District. In a spirit of compromise, I recommended to the City administration that they accept this additional request with the understanding that such additional revenues would be used to pay costs relating to the extraordinary retail facility thereby enhancing the Developer's ability to get financing for such facility. The Developer, through its counsel, is asking that the incremental state tax revenues resulting from the extraordinary retail facility, the first \$10,000,000 in incremental sales as well as any additional development that the Developer or an affiliate may undertake be available to pay not only costs relating to the extraordinary retail facility but also costs of totally unrelated development. My proposed draft specifically allows the Developer to ask the IDB to permit the state tax revenues to be applied to pay costs of additional development projects, but, under my draft, the IDB would have the opportunity to review each project to make sure the project serves the economic interests of the City, as supported by the IDB.

In my judgment, the Developer's request to have the guaranteed right to apply incremental state tax revenues to other development projects is problematic for two reasons. First, it would create a disincentive for other developers to pursue additional development projects with the Border Region District. Another developer would not have the pre-approved right to receive the benefit of the incremental state tax revenues from its project, as would the Developer if its request were accepted, so any other developer would face a strong competitive disadvantage, from a timing and approval perspective, in terms of promoting additional development within the Border Region District. Assisting other developers with projects will already be challenging because the taxes relating to the first \$10 million in incremental sales is already committed, and giving the Developer an additional benefit would create an even greater challenge for other prospective developers.

The second reason that the IDB should consider is that the proposed public incentives to the Developer are already very generous without offering this additional benefit. As you know, the Developer has requested \$5 million in assistance from the City, the form of which is still to be negotiated. The benefit of receiving the incremental state tax revenues on the first \$10 million in incremental sales, which the Developer did not create, is over \$11 million with an approximate present value benefit of \$7.5 million. These incentives are in addition to making available all state tax revenues that are allocated from the extraordinary retail facility. Therefore the present value of the incentives to the Developer is approximately \$12.5 million, plus the allocable state tax revenues from the extraordinary retail facility, which should be very substantial. As you know, the only comparable transaction of this nature in Tennessee that has closed to date is in the City of Bristol, where a similar extraordinary retail facility is being constructed. In that transaction, the City of Bristol agreed to provide \$9 million to assist with necessary public improvements and assisted with a type of a property tax increment financing transaction that netted an additional \$1.7 million for the developer. The City of Bristol also agreed to allocate the state tax revenues allocated to the City from the extraordinary retail facility to the developer to pay costs relating to the project. While the City agreed to pay the cost of additional public improvements in the area adjacent to the project, that commitment was subject to the developer leasing over 300,000 square

feet of additional space, which is not relevant in this case. So, to compare the public incentives made available in the City of Bristol project with this project, the value of the incentives offered by the IDB, and approved by the City, are already over \$1 million more than what was provided by the City of Bristol, even though the land cost to the developer in the Bristol development was many times higher than the land cost incurred by the Developer in this transaction. Therefore, by any measure, the incentives offered by the City and the IDB, if the proposed Agreement is accepted, are already generous as compared with the only comparable transaction in the State.

In summary, I would recommend the draft of the Agreement provided with this Memorandum as a reasonable compromise with the Developer. This proposed Agreement should satisfy the Developer's financing needs while staying consistent with the spirit and intent of the resolution adopted by the City relating to this transaction.

GMM

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**DEVELOPMENT AND ALLOCATION AGREEMENT RELATING TO BORDER REGION
RETAIL DEVELOPMENT DISTRICT**

THIS DEVELOPMENT AND ALLOCATION AGREEMENT RELATING TO BORDER REGION RETAIL DEVELOPMENT DISTRICT (this "Agreement") is made and entered into as of the ____ day of _____, 2014, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF EAST RIDGE**, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53-101, et seq., (the "IDB"), and **EXIT ONE LLC**, a Tennessee limited liability company (the "Developer").

WITNESSETH:

WHEREAS, the Border Region Retail Tourism Development District Act, codified as Tenn. Code Ann. §§ 7-40-101 et seq. ("Border Region Act"), was enacted to increase tourism and the competitiveness of the State of Tennessee ("State") with bordering states by empowering local governments to encourage the development of extraordinary retail or tourism facilities, including shopping, recreational and other activities; and

WHEREAS, pursuant to the Border Region Act and at the request of the City of East Ridge, Tennessee ("City"), the Commissioner of the Department of Revenue of the State has certified an area within the City as a border region retail tourism development district (the "Border Region District"), which Border Region District is shown on the map attached hereto as Exhibit A; and

WHEREAS, after such certification, a portion of the state sales and use tax revenues collected in the Border Region District shall be distributed to the City as provided in the Border Region Act (the "Allocated State Tax Revenues"); and

WHEREAS, the Developer has proposed the development of that certain property located within the Border Region District described or shown on Exhibit B attached hereto (the "Project Property") with an extraordinary retail or tourism facility and related retail development (the "Project"); and

WHEREAS, pursuant to the Border Region Act, the City is authorized to delegate to the IDB the authority to carry out any project authorized by the Border Region Act and to incur costs for the any such project; and

WHEREAS, by resolution of the City Council of the City, the City has made such a delegation to the IDB with respect to the Border Region District; and

WHEREAS, pursuant to such delegation, the City has agreed to pay to the IDB certain of the Allocated State Tax Revenues described herein that are to be allocated to the City pursuant to the Border Region Act; and

WHEREAS, the IDB has agreed that the these certain Allocated State Tax Revenues which are will be paid to the Developer to be used to pay the costs of the development of the Project to the extent provided herein; and

WHEREAS, pursuant to the Border Region Act, the City and the IDB are authorized to provide such incentives or financial support in the Border Region District as they deem appropriate in support of an economic development project, within the meaning of the Border Region Act; and

WHEREAS, for the purpose of establishing the rights and obligations of the parties with respect to the matters described above and related matters, the parties have entered into this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereafter set forth in detail, the parties do hereby mutually agree as follows:

**ARTICLE I
REPRESENTATIONS AND WARRANTIES**

Section 1.01. Representations and Warranties of Developer. The Developer represents and warrants for the benefit of the IDB and the City as follows:

(a) Organization. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Tennessee, is in compliance with the laws of the State of Tennessee, and has the power and authority to own its properties and assets and to carry on its business in the State of Tennessee as now being conducted and as hereby contemplated.

(b) Authority. The Developer has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.

(c) Binding Obligations. This Agreement is a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms, subject to applicable insolvency laws and equitable principles.

(d) No Litigation. No litigation at law or in equity or proceeding before any governmental agency involving the Developer is pending or, to the knowledge of the Developer, threatened, in which any liability of the Developer is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the Developer or the performance of its obligations hereunder.

(e) No Default. Developer is not in default under or in violation of, and the execution, delivery and compliance by the Developer with the terms and conditions of this Agreement will not conflict with or constitute or result in a default under or violation of (i) any material agreement or other instrument to which the Developer is a party or by which it is bound, or (ii) any constitutional or statutory provisions or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Developer or its property, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

Section 1.02. Representation and Warranties of IDB. The IDB represents and warrants for the benefit of the Developer as follows:

(a) Organization. The IDB is a public non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee, is in compliance with the laws of the State of Tennessee, and has the power and authority to own its properties and assets and to carry on its business in the State of Tennessee as now being conducted and as hereby contemplated.

(b) Authority. The IDB has the power and authority to enter into this Agreement and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the IDB.

(c) Binding Obligations. This Agreement is a legal, valid and binding obligation of the IDB enforceable against the IDB in accordance with its terms, subject to applicable insolvency laws and equitable principles; provided, however, that this subsection shall not be construed as a representation or warranty that the Commissioner of Revenue of the State of Tennessee (the "Commissioner") will accept, confirm or approve any cost certification made by the City and/or the IDB to the Commissioner under the Border Region Act.

(d) No Litigation. No litigation at law or in equity or proceeding before any governmental agency involving the IDB is pending or, to the knowledge of the IDB, threatened, in which any liability of the IDB is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the IDB or the performance of its obligations hereunder.

(f) No Default. The IDB is not in default under or in violation of, and the execution, delivery and compliance by the IDB with the terms and conditions of this Agreement will not conflict with or constitute or result in a default under or violation of, (i) any material agreement or other instrument to which the IDB is a party or by which it is bound, or (ii) any constitutional or statutory provisions or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the IDB or its property, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

ARTICLE II INITIAL PHASE OF DEVELOPMENT

Section 2.01. Financial Assistance to Developer. In accordance with the Border Region Act, the IDB has determined that the provision of financial assistance to the Developer will further the purposes of the Border Region Act and the economic development of the City, and the IDB hereby agrees to grant the Developer the amounts provided in this section at such times and upon the satisfaction of such conditions as are to be set forth in a development agreement relating to the construction of certain public improvements that will benefit the Project, as well as the public as a whole, and the provision of certain other assistance by the City in support of the Project (the "Incentive Agreement"), that is expected to be entered into among the Developer, the IDB and the City. The Developer acknowledges that no payments shall be required to be made by the IDB pursuant to this Section (i) if the conditions precedent to such payment to be set forth in the Incentive Agreement are not satisfied or (ii) if the Incentive Agreement is not entered into with the City within ninety (90) days of the date of this Agreement. Subject to the limitations of this section, the IDB agrees to pay to the Developer the Project State Tax Revenues (as defined below) as received to reimburse the Developer for all costs incurred by or on behalf of the Developer relating to the Project and/or the Project Property, all financing costs of Developer relating thereto, all costs of acquisition, development, construction and improvement of the Project, and all other costs identified by the Developer relating to the development of the Project and/or the Project Property eligible to be reimbursed under the Border Region Act which shall include all costs and expenses that would be an eligible "cost" within the meaning of the Border Region Act. The Developer shall provide a list of the costs eligible for reimbursement under this Section periodically for each and every eligible cost for which the Developer claims reimbursement hereunder and shall update such list from time to time on at least an annual basis as additional costs are incurred at such times as are needed to permit the City and/or the IDB to submit such costs for approval by the State Department of Revenue. To the extent the Developer seeks reimbursement for any interest expense incurred by the Developer with respect to debt incurred to finance costs related to the Project Property, in no event shall the annual interest rate on the debt resulting in such interest expense exceed the highest lawful rate under

applicable state law if other than Tennessee or federal law or if no such other law is applicable, under the Tennessee formula rate (within the meaning of Tenn. Code Ann. § 47-14-103) at the time such debt was incurred. The amounts payable to the Developer pursuant to this Section 2.01 shall be payable solely from Project State Tax Revenues allocated to the IDB. The IDB, on behalf of the City, will submit the cost certification summaries required by the Border Region Act on an annual basis and shall request a distribution from the State of all eligible Allocated States Tax Revenues, including all amounts payable to the Developer as provided in this Section. The parties will fully cooperate in submitting such cost certifications. The IDB will pay the Project State Tax Revenues to the Developer within thirty (30) days of receipt and shall pay such Project State Tax Revenues to the Developer until the Developer has been reimbursed for all eligible costs pursuant to this Section. As long as amounts are payable to the Developer as hereinafter provided, the IDB shall not encumber in any manner such Project State Tax Revenues without obtaining the prior written consent of the Developer.

For purposes of this Agreement, the "Project State Tax Revenues" shall mean the following Allocated State Tax Revenues: (a) the Allocated State Tax Revenues attributable to sales or use taxes derived from or relating to the Project Property; (b) the Allocated State Tax Revenues attributable to sales or use taxes derived from or relating to any other property owned by the Developer in the Border Region District or owned by any entity in which John R. Healy, Ethan S. Wood and Matthew W. Wood are in the aggregate majority owners (the "Other Developer Property"); and (c) the Allocated State Tax Revenues attributable to the first \$10,000,000 in incremental sales derived from or relating to any property within the Border Region District other than the property described in clauses (a) and (b) of this paragraph. For purposes of making the calculations required by this paragraph, none of the "base tax revenues," within the meaning of the Act, shall be allocated to Project Property for purposes of these calculations, and as to the other properties in the Border Region District, the "base tax revenues" shall be allocated proportionately based upon the sales and use taxes generated by or derived from the property as to which the calculation is being made.

Section 2.02. Identification of Applicable State Sales and Use Tax Revenues from Project Property and Incremental Tax Revenues. The Developer and the IDB will cooperate fully in identifying no later than thirty (30) days after each June 30 the amount of sales on the Project Property and Other Developer Property that are subject to state sales or use tax and that produced Allocated State Tax Revenues for the annual period ending on such June 30. In the event such sales data is not publicly available, the parties will use their best efforts to estimate the amount of such sales.

Section 2.03. Conversion to Financing. The IDB acknowledges that the Developer may desire in the future to finance costs incurred by the Developer with respect to the development of the Project Parcel and may desire to pledge the Project State Tax Revenues payable to the Developer hereunder to such financing and/or to request the IDB to issue bonds payable from such Project State Tax Revenues, the proceeds of which would be loaned to the Developer to reimburse the Developer for eligible costs. Upon the request of the Developer to assist with such financing, the IDB agrees to cooperate fully with the Developer, at the Developer's expense, to accomplish such financing and will negotiate in good faith such amendments to this Agreement as are necessary to enable such financing, provided such amendments do not increase any liabilities or create recourse financial obligations of the IDB or the City.

Section 2.04. Development of Other Developer Property. If the Developer or an affiliate thereof desires to develop from time to time one or more of those additional parcels of property that would constitute Other Developer Property, the Developer may request the IDB to provide financial assistance to support the development of such additional parcel(s) by agreeing to pay eligible costs of the Project from Allocated State Tax Revenues, including Project State Tax Revenues. In connection with any such request, the Developer shall provide the IDB with its estimate of the local sales tax revenues to

be collected by the City due to the development of the parcel and will provide the IDB with such other information as the Developer deems relevant for purposes of this Section. Upon receipt of such request, the IDB will determine, in consultation with the City, whether financial assistance under the Border Region Act is required in order to cause the development of the parcel for a use acceptable to the IDB and will notify the Developer of such determination. If the IDB determines that such financial assistance is appropriate, the IDB will execute a supplemental agreement with the Developer to provide such financial assistance.

ARTICLE III EVENTS OF DEFAULT AND REMEDIES

Section 3.01. Developer Event of Default. The occurrence and continuance of any of the following events shall constitute a "Developer Event of Default":

(a) failure of the Developer to perform any of its obligations under this Agreement after written notice is given to the Developer of such failure and the Developer has not cured such failure within sixty (60) days of such notice; or

(b) any material representation, warranty, certification or other statement made or deemed made by Developer in this Agreement or in any statement or certificate at any time given by Developer in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made; or

(c) a court of competent jurisdiction shall enter a decree or order for relief in respect of either Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed, or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Developer under any applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Developer, as the case may be, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Developer for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Developer, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(d) Developer shall have an order for relief entered with respect to it or shall commence a voluntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Developer shall make any assignment for the benefit of creditors, or Developer shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or Developer shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 3.01(c).

Section 3.02. IDB Remedies. If a Developer Event of Default occurs hereunder, the IDB may (a) terminate this Agreement, following written notice to the Developer and/or a sixty (60) day opportunity to cure at which time all of the rights and privileges of the Developer hereunder shall cease and be of no further force or effect, and/or (b) pursue whatever other remedies are available at law or in

equity which are necessary or desirable to effect the purposes of this Agreement. The IDB's termination of the rights of the Developer shall not terminate or otherwise adversely affect the rights of the IDB to pursue and exercise other remedies against either Developer.

Section 3.03. Waiver. No failure by the IDB to exercise any right, remedy, or option under this Agreement or any present or future supplement hereto, or delay by the IDB in exercising the same, will operate as a waiver thereof. No waiver by the IDB will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by the IDB on any occasion shall affect or diminish the IDB's rights thereafter to require strict performance by the Developer of any provision of this Agreement. The IDB's rights under this Agreement will be cumulative and not exclusive of any other right or remedy which the IDB may have. Following a Developer Event of Default and opportunity to cure as provided above, the IDB any time and from time to time, may apply any and all funds from the Project Fund against any and all obligations of Developers to the IDB under this Agreement.

Section 3.04. IDB Events of Default. The occurrence and continuance of any of the following events shall constitute a "Governmental Event of Default":

(a) failure of the IDB to perform any of its obligations under this Agreement after written notice is given to the IDB of such failure and the IDB has not cured such failure within sixty (60) days of such notice; or

(b) any material representation, warranty, certification or other statement made or deemed made by either the IDB in this Agreement or in any statement or certificate at any time given by either the IDB in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made; or

(c) a court of competent jurisdiction shall enter a decree or order for relief in respect of either the IDB in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed, or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against either the IDB under any applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over either the IDB, as the case may be, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of either the IDB for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of either the IDB, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(d) either the IDB shall have an order for relief entered with respect to it or shall commence a voluntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or either the IDB shall make any assignment for the benefit of creditors, or either the IDB shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or either the IDB shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein.

Section 3.05. Developer Remedies. If any Governmental Event of Default listed above occurs, the Developer may elect to terminate this Agreement and shall be compensated for the cost of the work performed to date and not previously reimbursed, as well as for the damages resulting from the Governmental Event of Default, but any liability of the IDB shall be subject to the limitations of Section 4.01 hereof. If the Developer intends to terminate this Agreement, the Developer shall first notify the IDB in writing of such intention and of the grounds for such termination and allow IDB sixty (60) days to eliminate or mitigate to the reasonable satisfaction of the Developer the grounds for such termination. If, in the reasonable opinion of the Developer, such grounds for termination can be eliminated or mitigated, but not within such 60 day period, such period shall be extended in order to provide a reasonably sufficient amount of time to accomplish such elimination or mitigation, but only if the non-defaulting governmental entity has instituted corrective action within such 60 day period and the non-defaulting governmental entity is thereafter proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), the non-defaulting governmental entity has not eliminated or completely mitigated such grounds for termination to the reasonable satisfaction of the Developer, the Developer may then terminate this Agreement by delivering a written notice of such termination to the IDB and the City. In any event, the liability of the IDB for any Governmental Event of Default or any other claim by Developer under this Agreement or related to this Agreement or the transactions to be consummated hereunder shall be specifically limited by the terms of Section 4.01 hereof.

ARTICLE V MISCELLANEOUS

Section 4.01. IDB Liability. No Personal Liability; No City Liability. THE LIABILITY OF THE IDB FOR ANY CLAIM BY DEVELOPER IS EXPRESSLY LIMITED TO THE IDB'S INTEREST IN ANY ALLOCATED STATE TAX REVENUES PAYABLE TO THE IDB FROM THE BORDER REGION DISTRICT, AND, OTHERWISE, THE IDB SHALL NOT HAVE ANY PECUNIARY LIABILITY UNDER THIS AGREEMENT FOR ANY ACT OR OMISSION OF THE IDB. NO OTHER PROPERTY OR ASSETS OF THE IDB SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER PROCEDURES FOR THE SATISFACTION OF REMEDIES OF THE DEVELOPER HEREUNDER OR RELATING HERETO. UNDER NO CIRCUMSTANCES SHALL THE IDB BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES, ALL OF WHICH ARE HEREBY WAIVED BY THE DEVELOPER. NO RECOURSE SHALL BE HAD FOR ANY CLAIM BASED UPON ANY OBLIGATION, COVENANT OR AGREEMENT IN THIS AGREEMENT OR ANY TRANSACTION OR MATTER RELATING HERETO AGAINST ANY PAST, PRESENT OR FUTURE DIRECTOR, OFFICER, EMPLOYEE, COUNSEL OR AGENT OF THE IDB, WHETHER DIRECTLY OR INDIRECTLY, AND ALL SUCH LIABILITY OF ANY SUCH INDIVIDUAL AS SUCH IS EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND IN CONSIDERATION FOR THE IDB ENTERING INTO THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT THE DEVELOPER MAY ENFORCE THE TERMS OF THIS AGREEMENT THROUGH A CLAIM FOR SPECIFIC PERFORMANCE. THE DEVELOPER ACKNOWLEDGES THAT THE CITY IS A SEPARATE ENTITY FROM THE IDB, AND IN NO EVENT SHALL THE CITY BE RESPONSIBLE FOR THE PERFORMANCE OF ANY OBLIGATIONS OF THE IDB HEREUNDER OR LIABLE FOR ANY CLAIMS AGAINST THE IDB HEREUNDER.

Section 4.02. Indemnity. The Developers shall indemnify the IDB and its successors and assigns, and every director, officer, employee, counsel and agent of the IDB (individually, an "Indemnatee") with respect to, and hold each Indemnatee harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the fees and

disbursements of counsel for any Indemnitee in connection with any investigative, administrative or judicial proceeding, whether or not such Indemnitee shall be designated a party thereto) which may be imposed on, incurred by, or asserted against such Indemnitee, in any way relating to or arising out of this Agreement (other than as a result of a breach hereof by the IDB), or the development of the Project ("Indemnification Liabilities"). The Developers shall reimburse each Indemnitee on demand from time to time for all Indemnification Liabilities incurred by such Indemnitee. Each Indemnitee will promptly notify the Developer of the commencement of any proceeding involving it in respect of which indemnification may be sought pursuant to this Section. The obligations of the Developers under this Section 4.02 shall survive the termination of this Agreement.

Section 4.03. Assignment. The Developer may assign or transfer this Agreement, or any interest of the Developer hereunder, without the prior written consent of IDB. Any such assignment shall not relieve the Developer its liability for the performance of its duties and obligations hereunder unless IDB consents to such release.

Section 4.04. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties.

Section 4.05. Notices. Any notice, request, demand, tender or other communication under this Agreement shall be in writing, and shall be deemed to have been duly given at the time and on the date when personally delivered, or upon the Business Day (as defined below) following delivery to a nationally recognized commercial courier for next day delivery, to the address for each party set forth below, or upon the third (3rd) Business Day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below.

If to the Developer to:
Exit One LLC
115 Cedar Lane
Chattanooga, TN 37421

With a copy to:
William G. Colvin,
Esq.
Suite 428
801 Broad Street
Chattanooga, TN 37402

If to the IDB:
The Industrial Development Board of the City East Ridge
1517 Tombras Avenue
East Ridge, TN 37412
Attention: Chairman

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such communication. By giving prior notice to all other parties, any party may designate a different address for receiving notices.

Section 4.06. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee. Venue for any action arising out of this Agreement shall be exclusively in Hamilton County, Tennessee.

Section 4.07. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the IDB and the Developer with respect all matters contained herein. This Agreement contains the sole and entire understanding between the IDB and the Developer with respect to the transactions contemplated by this Agreement.

Section 4.08. Amendment. This Agreement shall not be modified or amended in any respect except by written agreement executed by or on behalf of the parties to this Agreement in the same manner as this Agreement is executed; provided, however, that no modification or amendment of this Agreement shall be effective unless the IDB shall have provided its prior written consent to such modification or amendment.

Section 4.09. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 4.10. Captions. All captions, headings and section and paragraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement. All references to particular sections, paragraphs or subparagraphs by number refer to the particular section, paragraph or subparagraph so numbered in this Agreement unless reference to another document or instrument is specifically made.

Section 4.11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Agreement.

Section 4.12. Expenses. Each party shall promptly pay all of their own costs and expenses incurred in connection with the performance of their obligations under of this Agreement.

Section 4.13. Term. Unless terminated earlier as provided herein, this Agreement shall be effective as of the date hereof and shall remain in effect until the parties have performed all of their obligations hereunder or until terminated upon default or by mutual agreement of the parties and the City or their successors and assigns.

Section 4.14. No Government Limitation. This Agreement shall not be construed to bind any other agency or instrumentality of federal, state or local government in the enforcement of any regulation, code or law under its jurisdiction.

Section 4.15. Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this Agreement.

Section 4.16. Business Days. For purposes of this Agreement, "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the State of Tennessee. If any date on which performance or notice is due under this Agreement is not a Business Day, performance or notice shall not be due until the next Business Day.

Section 4.17. Approvals by IDB. Any approval by the IDB required hereunder may be granted by a duly authorized representative of the IDB and not the board of directors of the IDB, unless specifically provided otherwise herein.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE CITY OF EAST RIDGE, TENNESSEE

By: _____
Chairman

EXIT ONE LLC

By: _____
Title: _____

13217438.3

A RESOLUTION OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF EAST RIDGE APPROVING THE EXECUTION AND DELIVERY OF A DEVELOPMENT AND ALLOCATION AGREEMENT RELATING TO BORDER REGION RETAIL DEVELOPMENT DISTRICT AND AUTHORIZING CERTAIN ACTIONS RELATING THERETO

WHEREAS, The Industrial Development Board of the City of East Ridge (the "Board") has met pursuant to proper notice;

WHEREAS, the Board is a public non-profit corporation and an instrumentality of the City of East Ridge, Tennessee (the "City");

WHEREAS, the City has designated a certain area within the City as a Border Region Retail Tourism Development District (the "District") pursuant to Tenn. Code. Ann. §§ 7-40-401 et seq. (the "Border Region Act"), which District has been approved by the Tennessee Commissioner of Revenue; and

WHEREAS, development of the District is critical to the growth and sustainability of the tax base of the City; and

WHEREAS, Exit One, LLC (the "Developer") has indicated its interest in developing an extraordinary retail or tourism facility (the "Project"), within the meaning of the Border Region Act, within the District; and

WHEREAS, the City Council of the City has adopted a resolution indicating its support for the Project proposed by the Developer and has irrevocably assigned all state sales and use taxes allocable to the City under the Border Region Act to the Board pursuant to such Resolution; and

WHEREAS, there has been submitted to the Board the proposed form of a Development and Allocation Agreement Relating to Border Region Retail Development District (the "Agreement") between the Board and the Developer pursuant to which the Board would agree to apply certain of the state sales and use taxes allocable to the Board to pay the cost of certain costs of the Project that are eligible to be paid under the Border Region Act; and

WHEREAS, the execution of such Agreement will further the public purposes of the Board by promoting development in the District and enhancing the economic growth of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF EAST RIDGE, TENNESSEE, AS FOLLOWS:

1. It is hereby found and determined that the assistance by the Board with the Project will promote the economy and development in the State of Tennessee and City and the welfare of the citizens thereof.

2. The Chairman or Vice Chairman of the Board is hereby authorized and directed to execute, and, if requested, its Secretary or Assistant Secretary is hereby authorized to attest, and either is authorized and directed to deliver the Agreement to the Developer.

3. The Agreement shall be in substantially the form submitted, which is hereby approved, with such minor completions, omissions and insertions as may be approved by the officer executing it, his or her execution to constitute conclusive evidence of his or her approval of any such completions, omissions and insertions.

4. The officers of the Board are hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above and the performance of the Agreement, including, without limitation, taking all actions as are necessary or appropriate to file and to assist the City in filing annual cost certifications with the State of Tennessee Department of Revenue and to receive all state sales and use taxes to which the City or the IDB is entitled under the Border Region Act.

5. The officers of the Board are hereby authorized to sign any and all documents necessary to administer all funds allocated to the Board under the Border Region Act, including establishing such accounts as such officers deem appropriate to hold funds allocated to the Board.

6. All other acts of the officers of the Board which are in conformity with the purposes and intent of this resolution are hereby ratified, approved and confirmed.

Adopted and approved this 25th day of June, 2014.

Secretary

13232009.1