

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is executed to be effective as of _____, 2022 (the “Effective Date”), by and between Blue Ladder Holdings, LLC, a Texas limited liability company (the “Owner”) and the City of Forney, Texas, a municipal corporation and political subdivision of the State of Texas situated in Kaufman County, Texas (the “City”), individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the City is a home rule municipal corporation of the State of Texas; and

WHEREAS, the Owner is the owner of real property located in the City of Forney, which is described by metes and bounds on **Exhibit A** (the “Property”); and

WHEREAS, the Owner or its successors and assigns intend to develop the Property for warehouse and distribution uses (the “Development”); and

WHEREAS, the Owner has submitted a request to rezone the Property, which is currently pending with the City (the “Zoning Request”); and

WHEREAS, the City has requested that, in connection with development of the Property, certain improvements be made to Pinson Road (the “Pinson Road Improvements”) as depicted on **Exhibit B** (the “Scope of Work”); and

WHEREAS, the Parties have agreed that after the City has approved the Zoning Request, Owner will escrow funds to pay for the cost of constructing the Pinson Road Improvements as provided in the Scope of Work;

NOW THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are acknowledged and agreed by the Parties, the Parties agree as follows:

ARTICLE I AGREEMENTS

1.1 If the Forney City Council approves the Zoning Request, and the approved zoning ordinance is substantially identical to those conditions set forth in the attached **Exhibit C**, then within thirty (30) days of the effective date of the zoning ordinance amendment, Owner will escrow one hundred sixty-three thousand fifty-two dollars (\$163,052.00) (the “Escrow Funds”) for the purpose of constructing the Pinson Road Improvements as set forth in the Scope of Work.

1.2 Upon the issuance by the City of construction permits for the Development, Owner agrees to the release of the escrow funds for the purpose of constructing the Pinson Road Improvements as set forth in the Scope of Work.

1.3 The City will undertake all work associated with implementing the Scope of Work for the Pinson Road Improvements. The City may not withhold or delay any city permits, approvals, or other consents related to the Development based on the status of the Pinson Road Improvements, including but not limited to any issues related to the project's design, construction, location, or funding.

1.4 Should the final cost of constructing the Pinson Road Improvements be greater than the amounts set forth in the Scope of Work, the Owner and the City will each be responsible for fifty percent (50%) of all cost increases, provided (a) the improvements are constructed within two years of approval of the Zoning Request; and (b) any changes to the Scope of Work must be jointly approved by the Owner and the City, with such approval not to be unreasonably withheld. Should the final cost of constructing the Pinson Road Improvements be less than the amounts set forth in the Scope of Work, the City may retain any excess without refund to Owner.

1.5 If the City has not issued construction permits for the Development within twelve (12) months after their initial submission to the City, the City shall refund the Escrow Funds to the Developer or to Developer's successor-in-interest.

ARTICLE II **GENERAL**

2.1 Assignment. This Agreement is assignable by the Developer, in whole or in part, upon notice to the City.

2.2 Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such Party via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the Parties shall be as follows:

To the City:	Attn: Charles W. Daniels City Manager of Forney, Texas P.O. Box 826 Forney, Texas 75126 E-mail: cdaniels@forneytx.gov FAX: 972.564.7349
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With a copy to: Attn: Jennifer Barnes Smith
City Attorney of Forney, Texas
P.O. Box 826 Forney, Texas 75126
E-mail: jsmith@forneytx.gov
FAX: 972.564.7349

To the Developer: Attn: Joshua Levine
Blue Ladder Holdings, LLC
14322 Night Hawk Way
North Potomac, MD 20878

With a copy to: Attn: Angela Hunt
Munsch Hardt Kopf & Harr, P.C.
500 N. Akard St., Suite 3800
Dallas, TX 75201
E-mail: ahunt@munsch.com

2.3 RESERVATION OF RIGHTS. THIS AGREEMENT CONSTITUTES A “PERMIT” WITHIN THE MEANING OF CHAPTER 245, TEXAS LOCAL GOVERNMENT CODE. EXCEPT AS PROVIDED IN THIS SECTION, THE DEVELOPER DOES NOT, BY ENTERING INTO THIS AGREEMENT, WAIVE (AND THE DEVELOPER EXPRESSLY RESERVES) ANY RIGHT THAT THE DEVELOPER MAY NOW OR HEREAFTER HAVE WITH RESPECT TO ANY CLAIM: (A) OF “VESTED” OR “PROTECTED” DEVELOPMENT OR OTHER PROPERTY RIGHTS ARISING FROM CHAPTERS 43 OR 245, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, OR OTHERWISE ARISING FROM COMMON LAW OR OTHER STATE OR FEDERAL LAWS; (B) THAT THE APPLICATION OF IMPACT FEES TO THE DEVELOPMENT OF THE PROPERTY VIOLATES CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, OR ANY OTHER LOCAL, STATE, OR FEDERAL LAW; OR (C) THAT AN ACTION BY THE CITY CONSTITUTES A “TAKING” OR INVERSE CONDEMNATION OF ALL OR ANY PORTION OF THE PROPERTY OR AN ILLEGAL EXACTION.

2.4 Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. Further, this Agreement shall supersede any other development or similar agreements related to the Property. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the Parties; and

(c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

2.5 Applicable Law; Venue. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Kaufman County, Texas. Venue for any action to enforce or construe this Agreement shall be Kaufman County, Texas.

2.6 No Third Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

2.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

2.8 Exhibits. The Exhibits attached to this Agreement are incorporated herein for all purposes.

Executed by the Developer and the City to be effective on the Effective Date.

ATTEST:

CITY OF FORNEY

By: _____

By: _____

Name: _____

Name: _____

Title: City Secretary

Title: Mayor

APPROVED AS TO FORM AND LEGALITY:

By: _____

Name: _____

Title: City Attorney

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

On _____, 2022, _____,
_____ of the City of Forney, Texas, whose name is subscribed to the
foregoing instrument, personally appeared before me and acknowledged to me that he executed
the same for the purposes and consideration therein stated.

Notary Public, State of Texas

[Additional signature page follows.]

EXHIBIT A
METES AND BOUNDS DESCRIPTION OF THE PROPERTY

BEING a tract of land situated in the JOHN GREGG SURVEY, ABSTRACT NO. 171, Kaufman County, Texas, and being part of a tract of land described in deed to Gregory K. Bell and Annette Bell, as recorded in Volume 1259, Page 429, Real Property Records, Kaufman County, Texas, and being all of a tract of land described in deed to Gregory K. Bell and Annette Bell, as recorded in Volume 2185, Page 550, Real Property Records, Kaufman County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" diameter iron rod found in the Southwest line of U.S. Highway No. 80, said iron rod also being at the North corner of Intex Addition Replat, an Addition to the City of Forney, Texas, according to the plat thereof recorded in Cabinet 2, Sleeve 342, Plat Records, Kaufman County, Texas;

THENCE South 51 degrees 31 minutes 18 seconds West, 623.70 feet, with the Northwest line of said Addition and along a fence line part of the way, to a point in a lake;

THENCE South 38 degrees 00 minutes 15 seconds East, 295.68 feet, with the Southwest line of said Addition, to a 1/2" diameter iron rod found;

THENCE North 51 degrees 20 minutes 00 seconds East, 1.69 feet, with the Southeast line of said Addition, to a 1/2" diameter iron rod found at the West corner of a tract of land described in deed to John B. Homesley, as recorded in Volume 1063, Page 666, Real Property Records, Kaufman County, Texas;

THENCE South 38 degrees 40 minutes 00 seconds East, 208.00 feet, with the Southwest line of said Homesley tract, to a 1/2" diameter iron rod found;

THENCE North 51 degrees 20 minutes 00 seconds East, 77.15 feet, with the Southeast line of said Homesley tract, to a 1/2" diameter iron rod found at the West corner of a tract of land described in deed to Deen Properties, LLC, as recorded in Volume 6166, Page 414, Real Property Records, Kaufman County, Texas;

THENCE South 55 degrees 51 minutes 21 seconds East, 518.45 feet, with the Southwest line of said Deen Properties, LLC tract and with the Southwest line of Deen Implement Addition, an Addition to the City of Forney, Texas, according to the Plat thereof recorded in Cabinet 3, Sleeve 411, Plat Records, Kaufman County, Texas, to a 1/2" diameter iron rod found in the Northeast line of a tract of land described in deed to K. L. Barnes, as recorded in Volume 5081, Page 320, Real Property Records, Kaufman County, Texas;

THENCE South 12 degrees 18 minutes 00 seconds West, 847.74 feet. with the said Northwest line of Barnes tract and along a fence line part of the way, to a 1/2" diameter iron rod found in

the North line of the Texas and Pacific Railroad (a 200 foot right-of-way), said iron rod also being at the beginning of a curve to the left having a radius of 2347.08 feet, a central angle of 19 degrees 18 minutes 03 seconds and a chord bearing North 84 degrees 08 minutes 00 seconds West, 786.92 feet;

THENCE with said curve in a Northwesterly direction and with the said North line of Railroad, an arc distance of 790.64 feet to a 1/2" diameter iron rod found at the end of said curve, said iron rod also being at the East corner of a tract of land described in deed to Texas Power and Light Company, as recorded in Volume 461, Page 157, Real Property Records, Kaufman County, Texas;

THENCE North 42 degrees 20 minutes 00 seconds West, 1444.05 feet, with the Northeast line of said Texas Power and Light Company tract, to a 1/2" diameter iron rod found at the South corner of a tract of land described in deed to FPLE Forney L.P., as recorded in Volume 1700, Page 132, Real Property Records, Kaufman County, Texas;

THENCE North 51 degrees 20 minutes 00 seconds East, 1656.88 feet, with the Southeast line of said FPLE Forney L.P. tract and with the Southeast line of a tract of land described in deed to the City of Crandall and Gastonia-Scurry Water Supply Corp., as recorded in Volume 886, Page 337, Real Property Records, Kaufman County, Texas, to a 1/2" diameter iron rod found in the said Southwest line of U.S. Highway No. 80;

THENCE South 38 degrees 40 minutes 00 seconds East, 423.50 feet, with the said Southwest line of U.S. Highway No. 80 and along a fence line, to a 1/2" diameter iron rod found;

THENCE North 51 degrees 20 minutes 00 seconds East, 50.00 feet, with the Southeast line of said U.S. Highway No. 80, to a concrete right-of-way monument found;

THENCE South 38 degrees 40 minutes 00 seconds East, 38.67 feet, with the said Southwest line of U.S. Highway No. 80, to the PLACE OF BEGINNING and containing 49.498 acres of land.