

**NOTICE
GLENPOOL INDUSTRIAL AUTHORITY
SPECIAL MEETING**

A Special Session of the Glenpool Industrial Authority will be held at 6:00 p.m. immediately following the Glenpool City Council meeting on September 16, 2019, at Glenpool City Hall, City Council Chambers, 12205 S. Yukon Ave., 3rd Floor, Glenpool, Oklahoma.

AGENDA

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| A) Call to Order - Timothy Lee Fox, Chairman | |
| B) Roll Call, Declaration of Quorum – Wendy Knight, Secretary; Timothy Lee Fox, Chairman | |
| C) Scheduled Business | |
| 1) Discussion and possible action to approve a Tax Reimbursement Agreement with Glentapp Development, LLC, for the purpose of incentivizing the sale of property in Southwest Crossroads Addition, Glenpool, Oklahoma, to an undisclosed retail business, the non-disclosure of which is authorized by the Open Records Act pursuant to § 24A.10.B.5. stating, “If disclosure would give an unfair advantage to competitors or bidders, a public body may keep confidential records relating to the prospective location of a private business or industry <i>prior to public disclosure</i> of such prospect.” (David Tillotson, City Manager) | 2 - 10 |
| <u>TRA w GTapp final 091019</u> | |

D) **Adjournment**

This notice and agenda was posted at Glenpool City Hall, 12205 S. Yukon Ave., Glenpool, Oklahoma, on September 12, 2019 by 4:00 pm.

Signed: Wendy Knight

Secretary

CONTINGENT SALES TAX REBATE AGREEMENT

THIS CONTINGENT REIMBURSEMENT AGREEMENT (the “**Agreement**”) made and entered into as of the last date executed by either party (the “**Effective Date**”), by and among the **City of Glenpool**, an Oklahoma municipal corporation (the “**City**”), the **Glenpool Industrial Authority**, an Oklahoma Public Trust, (the “**Authority**”), acting in its own right and on behalf of the City, and **Glentapp Development, LLC**, an Oklahoma limited liability company (“**Glentapp**”).

WHEREAS, Glentapp proposes to sell to [a proprietary and confidentially named business entity, the legal name of which will be disclosed in an existing but separate “**Exhibit A**,” which will be attached hereto and incorporated herein by reference simultaneously upon public disclosure of said business entity] (the “**Owner**”) a designated lot and block in the Southwest Crossroads Addition, a subdivision in the City of Glenpool, Tulsa County, Oklahoma 74033 (the “**Property**”), as depicted on a currently existing but separate “**Exhibit B**” which will be attached hereto and incorporated herein by reference simultaneously upon public disclosure of the legal name of the Owner¹;

WHEREAS, Owner intends to develop the Property into a retail store and related improvements (the “**Business**”); and

WHEREAS, the Authority, acting as a public trust for the benefit of the City, desires to incentivize such Business, in order to obtain from the Business, the benefits of sales tax and utility revenues, as well as related permitting fees, for the City and to promote the general welfare of the City, by promising to Glentapp the allotment of a designated portion of sales tax revenues derived from the Business only when and as actually remitted by the Business, subject to conditions in this Agreement (the “**Sales Tax Rebate**”).

THEREFORE, the City, the Authority and Glentapp, in consideration of the foregoing and as further set forth in this Agreement, hereby agree as follows:

1. PURPOSE

The purpose of this Agreement is that the Authority may facilitate and encourage the Business by enabling Glentapp to sell the Property to Owner on more favorable terms than would otherwise be feasible without the Sales Tax Rebate provided by this Agreement. Consideration to the Authority and the City is that the Business will provide retail sales taxes for the benefit of the City that exceed such Sales Tax Rebate, and further provide related infrastructure improvements, utility revenues and payment to the City of all

¹ Open Records Act notation: Pursuant to § 24A.5.1.b. of the Oklahoma Open Records Act, “records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act” are exempt from disclosure; and further, pursuant to § 24A.10.B.5. thereof, “The prospective location of a private business or industry *prior to public disclosure* of such prospect,” may be exempted from disclosure until such time as the private business chooses to identify its name and location.

requisite fees for building and related permits, any part or all of which would be unattainable without such facilitation and encouragement.

2. MUTUAL CONSIDERATION

This Agreement is entered into with the expectation that the Business will provide needed retail development within the City. It is further anticipated that the Business, when completed, will generate substantial sales tax and other revenues for the City which exceed the benefit conferred upon the Business by the Sales Tax Rebate.

3. SCOPE OF BENEFIT CONFERRED

The Business will, in its entirety, be completely funded with no direct assistance from the Authority or the City and all required permitting fees have been or shall be paid as accrued. Subject to all applicable requirements of the Oklahoma Constitution and applicable State statutes, and solely for the purpose of obtaining for the City the foregoing benefits, the City will provide to Glentapp the allocation of a portion of sales tax revenues actually generated, collected and remitted, net of any discounts or deductions, derived from the Business in amounts and subject to conditions set forth in Section 4 of this Agreement.

4. REBATE OF SALES TAX REVENUES

Payment to Glentapp by the City in the form of allocation of a designated portion of sales tax revenues from the Business shall occur as follows:

- A. The sole source of funds for allocation to Glentapp of the Sales Tax Rebate will be derived from sales tax revenues actually paid to the City, through its contract with the Oklahoma Tax Commission, as generated by taxable retail sales of the Business.
- B. Neither the City nor the Authority shall be liable for any errors or delays in payment of the Sales Tax Rebate caused by corresponding errors or delays in sales tax revenue received from the Oklahoma Tax Commission.
- C. Sales Tax Rebates by the City to Glentapp will not commence before, but shall commence on, the end of the first full fiscal quarter following the first submission of sales tax revenue payments to the City by the Business. Fiscal quarter shall mean a three-month increment corresponding to the municipal fiscal year of July 1 through June 30. Thus, fiscal quarters are July – September; October – December; January – March; and April – June.
- D. No sales tax receipts from the Business will be remitted by the Business nor collected by the City prior to the issuance of a certificate of occupancy for the Business on the Property.
- E. The City will allocate to Glentapp a portion of the City's sales taxes generated by the Business. Such portion shall be equivalent to two-thirds (2/3) of the three

percent (3%) unrestricted sales tax revenues (*i.e.*, two percent (2%)) of all taxable sales derived from the Business and remitted to the Oklahoma Tax Commission, as delivered and reported to the City by the Oklahoma Tax Commission, net of any discounts or deductions available to the Business (the “**Sales Tax Rebate**”). Rebate payments will be made on a quarterly basis and will be made by the City at the end of the month immediately following the end of each full fiscal quarter in which sales taxes paid by the Business are received by the City from the Oklahoma Tax Commission. Such Sales Tax Rebate payments will be made to Glentapp until a maximum aggregate Sales Tax Rebate of Two Hundred Fifty-Four Thousand, Five Hundred Forty and 60/100 Dollars (\$254,540.60) has been allocated, independently of the amount of Glentapp’s or the Owner’s expenditures on public infrastructure. The City, in its sole and absolute discretion, may elect to allocate Glentapp more than two-thirds (2/3) of unrestricted sales tax paid to the City (*i.e.*, two per cent (2%) of taxable sales) for any quarter in order to accelerate the payment obligation. In no case shall the total of Sales Tax Rebate payments exceed \$254,540.60.

- F. The City, the Authority and Glentapp agree that a purpose of the Sales Tax Rebate is to reimburse Glentapp for \$254,540.60 of the total \$354,540.60 cost of its discounted sales price of the Property to the Owner. The remaining balance of \$100,000.00 of the cost to Glentapp of such discounted sales price is payable to Whataburger Restaurants, LLC, (“**Whataburger**”) as an incentive for Whataburger to waive a certain “Competitor Exclusion” in its ground lease of property used for operation of the Whataburger Restaurant in Southwest Crossroads Addition (the “**Waiver**”), all as set out more completely in that Contingent Sales Tax Rebate Agreement made and entered into by and between the City and Whataburger, which will be attached hereto and incorporated herein by reference simultaneously upon disclosure of the legal name of the Owner as “**Exhibit C**” (the “**Whataburger Contingent Sales Tax Rebate Agreement**”)
- G. Because the parties hereto acknowledge that the Waiver is a condition of the sale of the Property presently owned by Glentapp to the Owner, payment of the Sales Tax Rebate amount provided by this Agreement is expressly subordinated to, and shall not commence prior to, full payment of the Whataburger Sales Tax Rebate.

5. LIMITATIONS

The parties acknowledge that, under applicable Oklahoma law, the City may not obligate itself to appropriate or otherwise allocate any existing or future tax or other monies of the City for the purpose of making the Sales Tax Rebate payments contemplated by this Agreement in any future fiscal year but only on a current fiscal year basis. Notwithstanding this limitation, the parties further acknowledge that the City has represented its willingness to, and has expressed a good faith, reasonable expectation that it will, take all such actions as may reasonably be necessary to accommodate and facilitate its own and/or the Authority’s performance under this Agreement.

6. AUTHORITY TO ENTER INTO AGREEMENT

The parties represent each to the other, by execution of this Agreement by the undersigned representatives identified below, that they have, through their authoritative boards or by such other actions as may lawfully be required, been authorized to enter into this Agreement; that the undersigned representatives have been duly authorized to execute this Agreement on behalf of each respective party; and that such authority has been granted on the basis of full and frank disclosure of all negotiations by and between the parties.

7. DISPUTE RESOLUTION

The parties hereto understand, agree and covenant each with the other, that in the event of any dispute or disagreement which the parties cannot mutually resolve by discussion and settlement, each party waives its right to trial by court or trial by jury and consents to resolve the dispute through arbitration under the guidelines of the American Arbitration Act. Should such disagreement or dispute arise, and if not settled within 60 days from the date of inception, either party shall have 30 days to advise the other of its intention to present the matter to binding arbitration. If, at the end of those 30 days, the matter remains unresolved, then either party will have 30 days thereafter to request binding arbitration with the American Arbitration Association.

8. COMPLIANCE WITH APPLICABLE LAWS; GOVERNING LAW

The parties to this Agreement agree that the laws of the State of Oklahoma, and any applicable municipal ordinances of the City, shall govern the validity, construction, interpretation, and effect of this Agreement. In the event of conflict between any law of the State and any ordinance of the City, the law of the State shall be applied. Glentapp agrees to include a provision in its purchase and sale contract with the Owner that the Owner is required to operate the Business in compliance with all applicable federal, state, and local regulations and laws. Failure to comply with this Section 8 by Glentapp and/or failure to comply with such contractual provision by Owner shall be deemed an event of default pursuant to Section 9 of this Agreement.

9. CONTINGENCIES

- A. The respective parties identified in this Section 9.A. shall be released from all obligations otherwise imposed by this Agreement, the Agreement shall be rendered null and void without liability to either party, and neither the City nor the Authority shall be liable for the Sales Tax Rebate or any other obligation to Glentapp if any of the following contingencies occurs:
- Owner does not for any reason acquire the Property to be used for the Business from Glentapp; or
 - Owner does not for any reason establish the Business on the Property; or

- Owner fails to remit to the Oklahoma Tax Commission, as receiver for the City, sales tax revenues derived from the Business in a timely manner or in an aggregate amount equal to at least \$254,540.60; or
- Glentapp is in default of any legal or contractual obligation created by Section 8 of this Agreement.

B. Except as otherwise limited by Section 5 of this Agreement, the City and/or Authority shall be in default of this Agreement if the City or the Authority, as applicable, fails to make payment of any Sales Tax Rebate allocation due hereunder to Glentapp in accordance with the schedule and amounts provided by this Agreement. If this event occurs, Glentapp may issue written notice to the City and/or the Authority advising either or both entities that it has thirty (30) days to cure such default. In the event the City fail to cure such default within thirty (30) days from the date it receives the foregoing notice from Glentapp, then Glentapp may proceed against the City and/or the Authority to collect all amounts due Glentapp subject to the limitations of this Agreement.

10. FORCE MAJEURE

The time frames for performance of either party hereunder shall be extended if such performance is delayed due to a catastrophe, riot, war, governmental order or regulation, strike, act of God or other similar contingency beyond the reasonable control of such party or its agents or contractors, except to the extent that such party fails to exercise reasonable measures to mitigate such delay.

11. ASSIGNMENT OF AGREEMENT

No assignment of this Agreement, nor of any right accruing under this Agreement, shall be made in whole or in part by either party without the express written consent of the other except for Glentapp's right to assign this Agreement to another Limited Liability Company.

12. BINDING EFFECT

Except as otherwise provided by Section 5, the provisions, covenants, terms and conditions in this Agreement apply to bind the parties, their legal heirs, representatives, successors and assigns.

13. AMENDMENT OF THE AGREEMENT

No modification or amendment of this Agreement shall be effective unless it is in writing, approved by duly authorized representatives of both parties, and signed by duly authorized representatives of the Authority and Glentapp. A signed original of such modification or amendment shall be fastened to the original Agreement and shall be deemed incorporated herein by reference, with signed copies retained by the parties.

14. ENTIRE AGREEMENT; MERGER CLAUSE; PREVIOUS AGREEMENTS
SUPERCEDED

This Agreement constitutes the final and complete agreement and understanding among the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are to be without effect in the construction of any provision or term of this Agreement.

15. NOTICE

A letter or other postal communication properly addressed and sent by first class mail, certified mail, or registered mail, to either party at the address provided below shall constitute sufficient notice whenever written notice is required for any purpose of this Agreement. Other forms of notice, such as email or fax, are acceptable but shall be effective to meet a notice requirement only if receipt is acknowledged by the receiving party. Notice is deemed to have been given as required when actually received or five days after verified delivery, whichever is earlier.

Address for notices to City:

Glenpool Industrial Authority
David Tillotson, City Manager
12205 S. Yukon Ave
Glenpool, OK 74033

Address for notice to Glentapp:

Glentapp Development, LLC
249 S. Coltrane Road
Edmond, Oklahoma 73034
Attention: James C. Tapp

16. CONFIDENTIALITY REQUIREMENTS

Glentapp, the City and the Authority acknowledge that, during the term of this Agreement, either party may or will have access to and receive information, records, files, data, or other materials of any description without limitation (individually or collectively, "Confidential Information") relating to business of the other party or that the other party considers and treats as confidential or proprietary in nature. Each party therefore agrees that it will not directly or indirectly disclose any such Confidential Information owned by or in the possession or control of the other to any unauthorized person or use any such Confidential Information for any unauthorized purpose.

17. RECORDS AND AUDITS

Glentapp acknowledges that either of the Authority and/or the City may be subject to audit of its records pertaining to the transactions contemplated by this Agreement by State or federal governmental authority. Therefore, Glentapp shall retain in its own records all books, documents, papers, records and other materials prepared by Glentapp or provided by the Authority or the City to Glentapp in conjunction with or related to this Agreement for at least three years following termination of this Agreement. Glentapp shall, as often as the Authority or the City reasonably deems necessary, permit authorized representatives of the Authority, the City, State, or the federal government to have full access to and the right to examine fully all such materials in the possession or under the control of Glentapp to the extent related to this Agreement.

IN WITNESS WHEREOF, the parties, by the undersigned duly authorized representatives, hereto affix their signatures and seals as of the dates indicated, the last such date being the Effective Date of this Agreement.

CITY OF GLENPOOL

DATE EXECUTED

By: _____
Timothy Lee Fox, Mayor

Attest:

By: _____ [SEAL]
City Clerk, Wendy Knight

Approved as to form:

By: _____
City Attorney, Lowell L. Peterson

GLENPOOL INDUSTRIAL AUTHORITY

DATE EXECUTED

By: _____
Timothy Lee Fox, Chair

Attest:

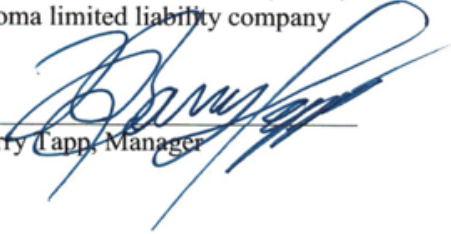
By: _____ [SEAL]
City Clerk, Wendy Knight

Approved as to form:

By: _____
Trust Attorney, Lowell L. Peterson

GLENTAPP DEVELOPMENT, LLC,
an Oklahoma limited liability company

DATE EXECUTED

By: 
F. Barry Tapp, Manager

Sept. 10, 2019

EXHIBITS “A”, “B” AND “C” will be attached hereto and incorporated herein by reference simultaneously upon public disclosure of the legal name of the Owner, as defined in the foregoing Agreement.