

## AMENDED ECONOMIC DEVELOPMENT AGREEMENT

THIS AMENDED ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") for a Public-Private Partnership is entered into by and between the Town of Trophy Club, Texas, a home rule municipality (hereinafter "Town"), Tax Increment Reinvestment Zone Number One (hereinafter "TIRZ #1"), Trophy Club Economic Development Corporation 4B (hereinafter "EDC"), OTD TC, LLC (OTD TC collectively referred to hereinafter as "the Developer"), and all entities collectively referred to as Parties in this Agreement ("Parties").

### WITNESSETH:

**WHEREAS**, the Town of Trophy Club is a home rule municipal corporation; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "EDC Act"), on May 4, 1996, the Town created Economic Development Corporation 4B for the purpose of making economic development incentives and grants (hereinafter referred to as "EDC"); and

**WHEREAS**, pursuant to Chapter 311 of the Texas Tax Code (hereinafter "TIRZ Act"), the Town created Reinvestment Zone No. 1, Town of Trophy Club, Texas (hereinafter "TIRZ") which is a tax increment fund for a designated zone within the Town, and

**WHEREAS**, Developer is the owner of an approximate 2.0517 acre tract of land generally located in the Trophy Wood Plaza project comprised of Tract 2 Lot 2R-2 and zoned as part of Planned Development, PD No. 25, more particularly described on **Attachment "A"**, a copy of which is attached hereto and incorporated herein (hereinafter the "Property"), and Developer desires to develop its Property; and

**WHEREAS**, the Property is located within the boundaries of Tax Increment Reinvestment Zone Number One; and

**WHEREAS**, Developer desires to enter into this Agreement with Town, EDC and TIRZ in order to develop its property; and

**WHEREAS**, in order to maintain and/or enhance the commercial economic and employment base of the Town of Trophy Club and the surrounding region for the long-term interest and benefit of the Town, in accordance with the EDC Act and TIRZ Act, the Town, EDC, and TIRZ #1 desire to enter into this Agreement to provide the terms of a public-private partnership between the Parties providing certain incentives for the development of the property in accordance with the standards set forth herein; and

**WHEREAS**, on the 24<sup>th</sup> day of March 2014, after negotiations with the Developer, the Town Council of the Town, the Board of Directors for EDC, and the Board of Directors for TIRZ approved a Term Sheet with Developer pursuant to applicable state law, outlining details of the proposed development and obligations of all Parties thereto; and

**WHEREAS**, by agreement of the Parties, the Term Sheet was amended on November 25, 2014, February 20, 2015, August 24, 2016, with payment obligations by EDC commencing on January 22, 2015; and

**WHEREAS**, pursuant to the EDC Act, the TIRZ Act, Chapter 380 of the Texas Local Government Code and other legal authority, the Town, EDC, and TIRZ desire to provide incentives to the Developer to develop the Property in accordance with this as more specifically set forth herein; and

**WHEREAS**, the Developer agrees to develop the Property in a manner consistent with an approved development plan as described in **Attachment “B”**, attached hereto and made a part hereof, or as amended in accordance with all provisions of the Town; and

**WHEREAS**, the Town, EDC, and TIRZ find that the administration of an economic development agreement to provide incentives to the Developer, in return for developing the Property would promote local economic development and stimulate business and commercial activity within the Town and would directly establish a public purpose; and

**WHEREAS**, the Town, EDC, and TIRZ has determined that this Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources in the establishment and administration of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Parties do mutually agree as follows:

## **ARTICLE I**

### **TERM**

**1.1** This Agreement shall be effective on the date that this Agreement is executed by all Parties (“Effective Date”) and shall continue until January 22, 2035 or until all obligations hereunder have been met, whichever occurs first (the “Term”) or, unless sooner terminated as provided herein.

## **ARTICLE II DEFINITIONS**

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

**“Agreement”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Town”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Construction Costs”** means the costs of all construction, including but not limited to, hard construction, construction equipment charges, the costs of construction materials and the delivery thereof, contractor fees, surveying and engineering costs and fees, insurance, bonding, fees for required bonds, or Town fees, including but not limited to inspection fees, impact fees and park development fees, related to the development of the Improvements and any parking, landscaping and lighting related to same.

**“Developer”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Effective Date”** means the date established in Article I of this Agreement.

**“Force Majeure”** shall mean any contingency or cause beyond the reasonable control of Developer, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of Developer), fire, explosion or flood, and strikes.

**“Payments”** means monetary payments made to the Town by the Developer for the Purchase Price of the Property.

**“Property Improvement(s)”** shall mean, at minimum, two (2) new restaurants including all ancillary improvements such as required parking and landscaping, more fully described in **Attachment “B”**.

**“Property”** shall mean the 3.88 acres generally located at Trophy Wood Drive and Highway 114, as described in **Attachment “A”** and described by metes and bounds, lot and block or abstract and survey attached hereto, and made a part hereof, and the improvements located or to be located thereon.

**“Public Improvements”** shall mean the public streets, public infrastructure (including, but not limited to, all curb and gutter, concrete parking, site lighting, landscaping, public utilities, permit fees, sidewalks, site preparation, and engineering) and related public facilities to be constructed on or benefiting the Property and all costs associated therewith.

**“Purchase Price”** shall have the meaning set forth in Article IV of this Agreement.

**“Sales And Use Tax”** means all of the sales and use tax imposed by the Town pursuant to Chapter 321 of the Texas Tax Code, as amended, and any other applicable law, on the sale of Taxable Items consummated on the Property.

**“Sales Tax Receipts”** means 100% of the Town’s annual receipts from the State of Texas from the collection of Sales and Use Tax from the Property as a result of the sale of Taxable Items on the Property.

**“Substantial Completion”** means with regard to the Public Improvements, the date the Town issues a Letter of Acceptance for the Public Improvements.

**“Tax Certificate”** (“Certificate”) means a certificate or other statement in a form reasonably acceptable to the Town setting forth the collection of Sales and Use Tax and Property Tax received by the Town, for Property Tax and the sale of Taxable Items on the Property consummated on the Property for the applicable period which are to be used to determine the Sales Tax Receipts, together with such supporting documentation as the Town may reasonably request.

**“Taxable Items”** shall have the same meaning assigned by Chapter 151, TEX. TAX CODE ANN., as amended.

### **ARTICLE III GENERAL PROVISIONS**

3.1 As soon as practical after the Effective Date of this Agreement, the Developer shall commence construction of the Property Improvements on the Property in accordance with the Town approved plans and in substantial conformance with the Concept Plan, a copy of which is attached hereto and incorporated herein as Exhibit “B”.

3.1.1 The Developer has purchased the Property, as described in Exhibit A, for \$1,064,278.25. The Developer shall submit or cause to be submitted to the Town for its review and approval final plans for the design of the Property Improvements in accordance with all Town ordinances and regulations. Property Improvements shall include the construction of, at minimum, two (2) high quality restaurants and associated improvements as shown on Exhibit “B” and further approved final site plan and construction plans on the Property.

3.1.2 The total investment on the Property, including any of Developer’s loans on the Property, construction of improvements and Public Improvements, and tenant improvements, or, alternatively, the appraised value of the Property following the improvements described herein, shall be approximately Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000).

3.2 Within twenty-four (24) months after January 22, 2015, Developer shall have obtained two (2) executed restaurant leases for two (2) restaurants located on the Property, and each lease shall have a ten (10) year minimum initial term. Additionally, within ~~thirty-six-fifty~~ (3650) months from January 22, 2015, Developer shall also obtain two (2) Certificates of Occupancy for two (2) restaurants on the Property.

3.2.1 In the event of Force Majeure or, if in the reasonable opinion of the Town, EDC and TIRZ, the Developer has made substantial progress toward completion of construction, renovation and installation of the Property Improvements and Public Improvements, additional time may be granted to Developer by the Town, EDC and TIRZ as may be required to reasonably allow Developer to comply with its obligations under this Agreement. Developer may request additional time for compliance of its obligations hereunder to Town, EDC, and TIRZ, based upon good cause, for an event of Force Majeure or other causes of delay as determined acceptable by Town, EDC and TIRZ in the reasonable discretion of Town, EDC, and TIRZ.

3.2.2 Developer shall use best efforts to provide two (2) separate restaurant quarterly gross sales reports to the Town within thirty (30) days following the end of each quarter, if Developer is able to obtain reports from tenants. This obligation shall end upon the date of termination of this Agreement.

#### **ARTICLE IV ECONOMIC DEVELOPMENT INCENTIVES – EDC Obligations**

**4.1 EDC Obligations:** Pursuant to a Chapter 380 sales tax reimbursement agreement with Developer, EDC shall designate a portion of its annual budget to pay ~~the Developer's Lenders~~ a total amount not to exceed \$1,064,278.25 (Purchase Price excluding interest) upon Developer's compliance with all conditions set forth in this section. EDC shall make such payments in accordance with subsection (a) of this Section and shall have the rights and remedies set forth below, and all payments shall be contingent upon Developer's compliance with each of the following conditions:

- a. **Payment Terms by EDC and Certificate of Occupancy Deadline.** EDC shall pay Developer's Lender monthly payments in the amount of \$5,926.48, for a period of twenty-four (24) months, which payment by EDC commenced on January 22, 2015 pursuant to the terms of the Letter Agreement between the EDC and the Developer dated February 19, 2015, with a total payment by EDC not to exceed \$71,117.76 annually to Developer's Lender, which amount is the equivalent of principal and interest due by Developer for the Property purchased (the "Land Repayment"). If at the end of the twenty-four (24) month period, such date being January 22, 2017, Developer has failed to obtain two (2) executed leases for two (2) restaurants, then EDC's Land Repayment obligations thereafter shall terminate, and EDC shall have the rights set forth in Section 4.1(b) (below), unless the parties agree to an extension of time as expressly authorized by this Agreement. Further, if Developer fails to obtain two (2) Certificates of Occupancy for each of the two (2) separate restaurant sites within the ~~thirty-six-fifty~~ (3650) months after the first Land Repayment (~~January 22, 2018~~ March 22, 2019), then all further

Land Repayment obligations of EDC hereunder shall terminate, unless the parties agree to an extension as expressly authorized by this Agreement, and EDC shall have the rights set forth in Sections 4.b and 4.f (below).

If at the end of the initial twenty-four (24) month period, ending on January 22, 2017, Developer has complied with its obligations under this Section, EDC shall continue to make Land Repayments through the end of the ~~thirty-six-fifty~~ (3650) month period ending on ~~January 22, 2018~~ March 22, 2019. If at the end of the ~~thirty-six-fifty~~ (3650) month period, Developer has complied with all obligations, EDC shall continue making Land Repayments in the amount of \$5,926.48 with a total payment by EDC not to exceed \$71,117.76 annually to the Developer's Lender pursuant to the Developer Agreement for a period of seven (7) additional years, ending January 22, 2025, or upon the date that Developer's debt is paid in full, whichever occurs first. If EDC has exercised its right to purchase the Property pursuant to Section 4.1(b) (below), then EDC shall continue making Land Repayments to Developer's Lender on its own behalf and Developer shall not be a party or beneficiary thereof, but shall comply with all of its obligations as set forth under Section 4.b (below). Notwithstanding the foregoing, such Land Repayment shall not exceed \$77,117.76 each year in which it is due, and debt service due on any bonds issued shall be paid by EDC prior to any payments to Developer due pursuant to this Agreement.

If the loan is paid in full to the lender by a source other than EDC before the total \$1,064,278.25 is paid by EDC, the same monthly payments shall be made to the Developer or Developer's designee until the obligation is satisfied. The payment recipient shall not change until Developer provides written notice of recipient and address pursuant to Section 7.2 of this agreement.

- b. **EDC/Town's Right to Purchase/Financing Agreements/Mandatory Transfer of Property.** The right of EDC and/or Town to purchase or require transfer of the Property by Developer shall be available at the end of the twenty four (24) month period, January 22, 2017, and again at the end of the ~~thirty-six-fifty~~ (3650) month period, ~~January 22, 2018~~ March 22, 2019, if Developer fails to comply with the requirements of Section 3.2 (above) related to such time periods. The Town and EDC's election to purchase the Property as permitted by this Section 4.1(b) shall be exercisable in its sole discretion within one hundred twenty (120) days of the passage of the twenty four (24) and/or ~~thirty-six-fifty~~ (3650) month periods (the "Option Periods"), after which Option Periods the Town and EDC waive their right to elect to purchase the Property. Developer, Town, and EDC shall structure the bank financing agreement(s) for the Property such that Town and/or EDC has the right to step into Developer's shoes as the purchaser of the Property and/or Developer is required to transfer title to the Property to the EDC and/or Town if OTD has failed to comply with its obligations under Section 3.2 (above). All payments associated with such purchase made by EDC to Developer shall be

paid directly to Developer's Lender for satisfaction of Developer's loan to purchase the Property. Developer agrees that upon request by Town and/or EDC, following Developer's failure to comply with its obligations under Section 3.2 of this Agreement, Developer shall within fifteen (15) days of written notice of default and demand by Town and/or EDC, execute all necessary documents and take all actions necessary to transfer all rights and interest to the Property, all Property Improvements, Public Improvements and all improvements of any kind to the Property, to Town and/or EDC. Developer's failure to timely comply with any requirement of this section shall be a default.

- c. **Prepayment by EDC.** The EDC has the right to pay the total principal amount to Developer's Lender at any time during the Agreement term without penalty, as well as to make additional principal payments without penalty.
- d. **Discretionary Sale by OTD.** The Town and/or EDC shall have the Right of First Refusal to purchase the Property if Developer desires to sell the Property with or without Public Improvements or Property Improvements at any time during the Right of First Refusal Term (defined below). The right of Town and/or EDC under this section shall remain in effect until such time as two (2) separate restaurants on the Property have each received a Certificate of Occupancy and Developer complies with all of its obligations under Section 3.2 and Section 4.1(a) of this Agreement (above), at which time the Town's and EDC's right of First Refusal shall terminate and be of no further force and effect ("Right of First Refusal Term"). If at any time during the Right of First Refusal Term Developer desires to sell the Property, Developer shall first advise Town, EDC, and TIRZ in writing by providing the name of the potential purchaser of the Property. Town, EDC and TIRZ shall have the right to reasonably approve any and all future purchasers of the Property during the term of this Agreement. Upon approval by Town, EDC and TIRZ of the proposed purchaser of the Property, this Agreement shall be fully transferrable to the approved purchaser. Town, EDC and TIRZ approval shall not be unreasonably withheld or delayed.
- e. **Lien Status.** The EDC shall hold third (3<sup>rd</sup>) lien status and, any such lien status of EDC shall be subordinate to Developer's Lender's position on all phases of development. Such EDC lien shall exist until all required milestones as set forth in Section 4.1 (a) (above) and in this Agreement have been met by Developer, at which point it shall terminate and cease to be of any force or effect, and the EDC shall issue and file all documents necessary to terminate and remove such lien. Notwithstanding the foregoing, EDC's lien status shall only be subordinate to Developer's Lender's lien(s).
- f. **Termination of Agreement.** In addition to the rights and remedies provided to Town and EDC pursuant to Section 4.1 (a) and 4.1 (b) above for the failure of Developer to comply with the requirements of those Sections, this Agreement shall terminate, unless the parties agree to an extension of time, with no further obligation or payment of any kind by Town or EDC to



Developer or Developer's Lender, if as of January 22, 2017, the expiration of twenty-four (24) months from January 22, 2015, Developer has failed to provide two (2) separate executed restaurant leases, and if as of ~~January 22, 2018~~ March 22, 2019, the expiration of ~~thirty-six~~fifty (~~36~~50) months from January 22, 2015, Developer has failed to timely comply with every term of this Agreement, or Developer has failed to obtain at least two (2) Certificates of Occupancy for two (2) separate restaurant sites by ~~January 22, 2018~~ March 22, 2019, in which event the provisions set forth in Section 4.1 (b) (above) shall take effect. However, if Developer complies with Sections 4.1 (a), 4.1(b), 4.1.(c), and 4.1 (d) (above), the EDC obligation to Developer shall terminate on January 22, 2025 or the date of payment in full of the Purchase by EDC and/or Town, whichever occurs first. Town's rights pursuant to Section 4.1 (c) (above) shall not be effected by this section.

- g. **Dissolution or Bankruptcy of Developer.** If Developer ceases to exist or files for bankruptcy during the Term of this Agreement, EDC shall be excused from making any future payments to Developer's Lender, and all agreements shall terminate pursuant to their terms. Notwithstanding the foregoing, Town's rights pursuant to Section 4.1(b) (above) shall survive termination of this Agreement.

## **ARTICLE V TIRZ OBLIGATIONS**

### **5.1 TIRZ Funding.**

- a. **TIRZ Reimbursement, Term and Public Improvements.** Developer shall be eligible for payment in an amount up to \$1,000,000 in reimbursement for amounts spent by Developer for eligible Public Improvements plus all interest which Developer must pay to a third party accumulated on the costs associated with such Public Improvements ("TIRZ Reimbursement"). Developer shall submit to Town proposed Public Improvements for which it seeks approval with appropriate bid and invoice documentation. Town must approve proposed Public Improvements as eligible for reimbursement by TIRZ prior to such expense being reimbursable to Developer. Town's determination shall be in the reasonable discretion of Town; such Town approval shall not be unreasonably withheld or delayed. Additionally, Developer shall comply with all applicable Town development regulations as a condition precedent to receipt of TIRZ Reimbursement.

Beginning thirty days after the date of submission of the first invoice for TIRZ Reimbursement for an eligible Public Improvement, TIRZ shall pay to Developer the TIRZ Reimbursement payable to Developer at a rate of sixty percent (60%) of total incremental revenue generated from the entire TIRZ for twenty (20) years, or until such time as a maximum amount of \$1,000,000 is paid to Developer in TIRZ Reimbursements, whichever occurs first. As long as there are sufficient funds available to pay the TIRZ Reimbursements, such payments shall be made ~~monthly~~ annually in December. Notwithstanding the



foregoing, if at the time of Town's approval of Developer's reimbursable expense(s), TIRZ has not generated sufficient funds to pay Developer the full amount of the TIRZ Reimbursement, TIRZ shall be entitled to defer payment of the TIRZ Reimbursement, without interest, to Developer until such time as TIRZ has sufficient funds to provide Developer with the TIRZ Reimbursement; and such a deferment shall result in an extension of the 20 year Term of this Agreement or until such time as all TIRZ Reimbursements are paid to Developer.

- b. **TIRZ First Priority.** Developer shall have "first priority" of payment of the TIRZ Reimbursements payable pursuant to Section 5.1(a); provided however that if Developer fails to comply with its obligations under this Agreement or is in any manner in default of one or more of its obligations under this Agreement, TIRZ may in its reasonable discretion revoke Developer's first priority status upon ten (10) days prior written notice to Developer. Within thirty days (30) of date of Developer's cure of such failure, Developer's "first priority" status shall be reinstated.

## 5.2 TIRZ Payment.

- a. **Lump Sum Payment.** Upon issuance of the first building permit for Bread Winners and Quarter Bar, the Town shall pay to Developer \$400,000 as part of the total \$1,000,000 TIRZ Reimbursement. TIRZ shall repay the Town \$400,000 from sixty-five percent (65%) of the total increment revenue generated by the TIRZ, including interest if desired by the Town. The Town shall have "first priority" of revenue and payment at a percentage rate not to exceed sixty-five percent (65%) of total incremental revenue generated from the entire TIRZ. TIRZ shall pay Developer's Lender 22.4966% of the 100% until the complete obligation of the original incentive agreement executed on August 24, 2016 is met. The total between both developers agreements shall not exceed a total of 35% of revenue generated by TIRZ.
- b. **Performance Payment Reduction of Reimbursable Expenses.** During years six through twenty (6-20) after the date of the execution of this Agreement, if a restaurant on the Property is continuously vacant for a period of twelve (12) months plus one (1) day, and Developer also is not in possession of: (1) a Letter Of Intent; or (2) a Building Permit; or (3) a Certificate of Occupancy, then the TIRZ Reimbursements shall be reduced by the total proportional contribution to the TIRZ of the form of ad valorem and sales tax generated by the vacant restaurant's highest incremental value generated. For example, if the former restaurant generated \$10,000 to the TIRZ and the total TIRZ payment due to Developer was \$20,000, then the \$20,000 payment would be reduced by \$10,000 until one or a combination of the foregoing events (1) through (3) occurs for a new restaurant upon the Property, at which time the TIRZ Reimbursements shall continue to be payable in full.

## ARTICLE VI TERMINATION

6.1 **Termination of Developer Agreement.** This Agreement shall terminate with no further payment of any kind by TIRZ to Developer if Developer has failed to timely comply with every term of this Agreement, and such failure has not been cured by ~~January 22, 2018~~ March 22, 2019, or such later date as agreed to by the EDC. Notwithstanding the foregoing, EDC's rights pursuant to Section 4.1(b) (above) shall survive termination of this Agreement.

6.2 **Dissolution or Bankruptcy of Developer.** If Developer ceases to exist or files for bankruptcy during the Term, TIRZ shall be excused from making any future payments to Developer, and this Agreement shall terminate. Notwithstanding the foregoing, Town's rights pursuant to Section 4.1(b) (above) shall survive termination of this Agreement.

6.3 **Default.** In addition to the other events of default set forth in this Agreement, this Agreement may be terminated upon any one or more of the following:

1. By written agreement signed by both parties;
2. Expiration of the Term or fulfillment of all obligations as outlined in this Agreement;
3. By the non-breaching Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within sixty (60) days after written notice thereof to the breaching Party;
4. By Town, if Developer suffers an Event of Bankruptcy or dissolution; and
5. By Town, if any taxes, assessments or payments owed to the Town or the State of Texas by Developer shall become delinquent and not cured within sixty (60) days after written notice thereof if Developer is not then protesting or contesting any such taxes or assessments, in which event Developer shall not be in default due to non-payment of the protested taxes.

## ARTICLE VII MISCELLANEOUS

7.1 **Successors and Assigns.** The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Except as expressly provided otherwise herein, this Agreement cannot be assigned by the Developer unless written permission is first granted by the Town, which consent shall not be unreasonably withheld, so long as the Developer's assignee agrees to be bound by all terms and conditions of this Agreement. Any party who obtains such consent shall hereafter be referred to as a "permitted assignee". It is understood and agreed between the parties that the Developer, in performing its obligations thereunder, is acting independently, and neither the Town, EDC and/or TIRZ assumes any responsibility or liabilities in

connection therewith to third parties; it is further understood and agreed between the parties that the Town, EDC and/or TIRZ, in performing its obligations hereunder, is acting independently, and the Developer assumes no responsibilities in connection therewith to third parties. Notwithstanding the preceding provisions of this Section 7.1, the TOWN, EDC and TIRZ each consent to Developer's Lender as a permitted assignee hereunder.

7.2 Notices. Notices required to be given to any party to this Agreement shall be given personally or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail:

For Town by notice to:

Town of Trophy Club  
Attn: ~~Stephen Seidel~~ Thomas M. Class, Sr.  
~~100 Municipal Drive~~ 1 Trophy Wood Drive  
Trophy Club, TX 76262

For Developer by notice to:

OTD TC, LLC  
Attn: Chris Gordon  
2241 Veranda Avenue  
Trophy Club, Texas 76262

With a copy to:

The Law Offices of David T. Denney, P.C.  
Attn: David Denney  
8350 N. Central Expwy., Suite 925  
Dallas, Texas 75206

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

7.3 No Waiver. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

7.4 Amendment. This Agreement may be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

7.5 Venue. Exclusive venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

**7.6 Indemnity. Developer agrees to defend, indemnify and hold Town, EDC and/or TIRZ, its officers, agents and employees, harmless against any and**

**all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Company's breach of this Agreement or by any negligent or strictly liable act or omission of Company, its officers, agents, employees or subcontractors, in the performance of this Agreement. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. This paragraph shall survive the termination of this Agreement.**

7.7 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of all Parties.

7.8 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement.

7.9 Severability. If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. In lieu of each invalid, illegal or unenforceable provision there shall be added a new provision by agreement of the parties as similar in terms to such invalid, illegal or unenforceable provision as may be possible and yet be valid, legal and enforceable.

7.10 Context. Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, singular words shall include the plural, and vice versa.

7.11 No Third Party Beneficiary: Except as otherwise expressly provided for herein, for purposes of this Agreement, including its intended operation and effect, the parties specifically agree and Agreement that: (1) the Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with TOWN, EDC, TIRZ or Developer, collectively or individually; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN, EDC, TIRZ, or Developer. Except as otherwise expressly provided for herein, this Agreement shall not create any third-party beneficiaries. Notwithstanding the preceding provisions of this Section 7.11, the TOWN, EDC, TIRZ, and Developer each acknowledge that the Developer's Lender, as defined in Section 7.13 (6), will rely upon Sections 4.1(e), 7.1, 7.11, and 7.13 of this Agreement in making a loan or loans to the Developer and is expressly included as a third party intended as a beneficiary of this Agreement relating to those express Sections and those Sections only.

7.12 Execution. This Agreement was authorized by action of the Town Council, EDC, and TIRZ and such action has authorized the Town Manager to execute this Agreement on behalf of the Town.

7.13 Developer's Lender Provisions. Notwithstanding anything to the contrary set forth in this document, the following provisions shall control:

1. TOWN, EDC, and TIRZ hereby consent to the Developer's collateral pledge and/or assignment of the Land Repayment and/or TIRZ Reimbursement to Developer's Lender in a manner the same as or similar to that provided in Chapter 64 of the Texas Property Code, as may be amended or superseded, and more commonly known as the Texas Assignment of Rents Act.
2. Before exercising any remedies of default against Developer or terminating the Land Repayment and/or TIRZ Reimbursement, the party exercising such remedies or termination shall first provide Developer's Lender with at least sixty (60) days notice of Developer's default and/or its intent to terminate the Land Repayment and/or TIRZ Repayment along with the specific reasons therefor, and allow the Developer's Lender an opportunity to cure said default and/or prevent such termination. Developer shall not be considered in default and no right of termination of the Land Repayment and/or TIRZ Repayment shall exist, so long as Developer's default under this Agreement is not creating material damage to the party exercising a remedy of default and/or termination of the Land Repayment and/or TIRZ Repayment, and Developer's Lender has begun to cure said default within the sixty (60) day period and thereafter diligently prosecutes the same to completion within a reasonable period of time thereafter.
3. EDC's rights of purchase and/or rights of first refusal under Article IV above shall be expressly subordinate to the rights and liens of Developer's Lender, and any sale, transfer, assignment, or other conveyance of the Property shall be made expressly subject to the Developer's Lender's rights and liens. The parties hereto agree to execute in a form reasonably acceptable to Developer's Lender and suitable for recording in the public records a Subordination, Non-Disturbance, and Attornment Agreement which includes this covenant.
4. In the event that TIRZ revokes Developer's priority status, before doing so, TIRZ shall provide Developer's Lender with at least thirty (30) days prior written notice of its intent to revoke Developer's priority status, and allow Developer's Lender an opportunity to cure the reasons for such potential revocation within that thirty (30) day or other extended period provided in the written notice.
5. Although Developer's Lender may have a right to perform an obligation or cure a default of the Developer under this Agreement, nothing herein shall require Developer's Lender to perform any such obligation or cure any default of Developer. The performance of an obligation or a cure of a default of

Developer by Developer's Lender in one instance shall not operate to require the Developer's Lender to perform any other future obligations or defaults. The determination to perform any obligations or cure any defaults of the Developer hereunder shall be made in the sole and complete discretion of Developer's Lender.

6. As set forth herein, the term Developer's Lender means "First State Bank, a Texas state bank", and its successors and permitted assigns under Section 7.1 above.
7. All payments made pursuant to this agreement shall be credited towards the Town's obligations under the original agreement executed on August 24, 2016.

## **TOWN OF TROPHY CLUB, TEXAS**

\_\_\_\_\_  
Mayor, C. Nick Sanders,  
Town of Trophy Club, Texas  
Date: \_\_\_\_\_

\_\_\_\_\_  
Chair, ~~David Brod~~Sean Bone  
TIRZ #1, Town of Trophy Club, Texas  
Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
President, ~~Gregory Wilson~~Sean Bone  
EDC-4B, Town of Trophy Club, Texas  
Date: \_\_\_\_\_

\_\_\_\_\_  
Holly Fimbres, Town Secretary

**APPROVED TO FORM:**

\_\_\_\_\_  
David Dodd, Town Attorney

## **OTD TC, LLC**

a Texas Limited Liability Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_





STATE OF TEXAS

§  
§  
§

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, ~~2016~~2018, by \_\_\_\_\_ OTD TC, LLC a Texas limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit "A"**  
**LEGAL DESCRIPTION**

LEGAL DESCRIPTION TRACT ONE: Lots 1 and 2, Block A, Trophy Wood Business Center, an addition to the Town of Trophy Club, Denton County, Texas according to the plat thereof recorded in Volume V, Page 295 of the Plat Records of Denton County, Texas. (Parcel now located in Tarrant County).

LEGAL DESCRIPTION TRACT TWO: Lot 2R-2, Block B, Trophy Wood Business Center, an addition to the Town of Trophy Club, Tarrant County, Texas according to the plat thereof recorded as Document No. D213097463 of the Plat Records of Tarrant County, Texas.

ZONING STATEMENT: According to the current published zoning information, Tract One and Tract Two are currently zoned PD-25.

FLOOD STATEMENT: Based on scaling the surveyed lot shown hereon onto the FEMA Flood Insurance Rate Map No. 48439C0085K (Rev. 9-25-09), said lot lies within FEMA zone X and does not lie within the FEMA designated 100-year flood plain. Miller Surveying, Inc. makes no statement as to the likelihood of the actual flooding of said surveyed lot.

EASEMENT STATEMENT: The following statements regarding easements and agreements are in reference to the items listed in Schedule B of the Commitment for Title Insurance issued on December 31, 2014 by Chicago Title Insurance Company, GF No. CTMH63-8055631400073 and are based on my professional opinion:

Regarding Item IO(f): The 10' Landscape Easement; the 37' Firelane Easement; the 15' Landscape Easement; the 5' Sidewalk and Utility Easement; the 35' Utility Easement; the 25' Utility Easement; and the 10' Utility Easement per plat Volume V Page 295 M.R.D.C.T. affect the surveyed tract(s) and are depicted accordingly;

Regarding Item O(g): The 30' Building Line per plat Volume V Page 295 M.R.D.C.T. affect the surveyed tract(s) and are depicted accordingly;

Regarding Item IO(h): The Variable Width Utility Easement; the 15' Landscape Easement; the 20' Sanitary Sewer Easement; the 5' Sidewalk & Utility Easement; the 15' Landscape Easement; the 10' Landscape Easement; the 10' Utility Easement and the Firelane, Drainage & Access Easement per plat D213097463 P.R.T.C.T. affect the surveyed tract(s) and are depicted accordingly;

Regarding Item O(i): The 30' Building Line per plat D213097463 P.R.T.C.T. affect the surveyed tract(s) and are depicted accordingly;

Regarding Item IOU): No plottable elements;

Regarding Item O(k): The surveyed tracts are subject to the Grant of Reciprocal Easements and Declarations of Covenants recorded as Document No. D206339101 D.R.T.C.T.;

Regarding Item 10(1): The surveyed tracts are subject to the Access Easement and Agreement recorded in Volume 5228, Page 3916, R.P.R.D.C.T.;

Regarding Item O(m): The easement to Texas Power and Light recorded in Volume 1521,Page 692 R.P.R.D.C.T. as shown on plat Cabinet A, Page 13053 P.R.T.C.T.. affects the surveyed tract(s) and is depicted accordingly;

Regarding Item O(n): The easement to Trophy Club Municipal Utility District No. 1 recorded in Volume 3260,Page 198 R.P.R.D.C.T. as shown on plat Cabinet A, Page 13053 P.R.T.C.T.,affects the surveyed tract(s) and is depicted accordingly;

Regarding Item O(o): The easement to Pacific Southwest Bank recorded as Document No. 1995-34614 R.P.R.D.C.T. does not affect the surveyed tract(s);

[illegible]