



**LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION  
BOARD OF DIRECTORS**

**Monday, July 11, 2022 - 6:00 p.m.**

**REGULAR MEETING  
100 WEST ELDORADO PARKWAY  
TOWN OF LITTLE ELM TOWN CENTER  
DEVELOPMENT SERVICES CONFERENCE ROOM**

**AGENDA**

1. **Roll Call and Call to Order of Regular Meeting:** Identification of Quorum and call to order.
2. **Discussion and Action** to approve the Minutes of the June 6, 2022 Regular Meeting. (Jennette Espinosa, Executive Director)
3. **Appointment of Little Elm EDC Board Member** to the serve on the Little Elm Local Development Corporations Board of Directors. (Jennette Espinosa, Executive Director)
4. **Discussion and Action** to consider and / or amend the financial thresholds for Little Elm EDC expenses for the Executive Director and Assistant Director. (Jennette Espinosa, Executive Director)
5. **Discussion and Action** to approve an Amendment to the categories, Land Acquisition for Redevelopment in the amount of \$2.5 Million, and for Incentives in the amount of \$216,010.00 for Budget FY 2021-2022. (Jennette Espinosa, Executive Director)
6. **Discussion and Action** to approve the Amended and Restated Development Agreement between the Town of Little Elm, Little Elm Economic Development Corporation and Palladium Little Elm Phase II, LTD. (Jennette Espinosa, Executive Director)
7. **Discussion and Action** to approve Amended and Restated Reimbursement Agreement and Performance Agreement between Tax Increment Zone Number Three, Town of Little Elm and Little Elm EDC. (Jennette Espinosa, Executive Director)

8. **Director's Report:** Discuss, Update, and Action, If Needed, Regarding Project, Policies, Events, Activities, and Calendar Pertaining to EDC. (Jennette Espinosa, Executive Director)
9. **Executive Closed Session of the Board of Directors.** The Little Elm EDC will now hold a Closed Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:
  - (A) **Section 551.072** of Texas Government Code to allow the governing body to conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.
    1. Project located in the general area of Eldorado Parkway and East Park Drive
  - (B) **Section 551.087** of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business prospect.
    1. Project located in the general area of Eldorado Parkway and Hardwicke Lane
    2. Project located in the general area of Eldorado Parkway and Main Street
10. **Reconvene into Open Session:** Take any action related to Executive Session
11. Adjournment.

Respectfully,

Jennette Espinosa

**Executive Director**

This is to certify that the above notice was posted on [www.littleelm.org](http://www.littleelm.org), Town of Little Elm website, under Agendas and Minutes prior to 5:00 p.m. this 8th day of July, 2022.



**Date:** 07/11/2022  
**Agenda Item #:** 2.  
**Department:** Economic Development Corporation  
**Strategic Goal:** Maintain operational integrity and viability  
**Staff Contact:** Jennette Espinosa, EDC Executive Director

---

**AGENDA ITEM:**

**Discussion and Action** to approve the Minutes of the June 6, 2022 Regular Meeting. (Jennette Espinosa, Executive Director)

**RECOMMENDED ACTION:**

Staff recommends approval of the Minutes as presented.

---

**Attachments**

Minutes June 6 2022

# DRAFT



**MINUTES  
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION  
100 W. Eldorado Parkway**

**REGULAR MEETING  
Monday, JUNE 6, 2022  
6:00 PM**

**Present:** Ken Eaken, President; Michel Hambrick, Vice President; Taylor Girardi, Treasurer; Michael McClellan, Council Liaison; Marce E. Ward, Board Member; Jeremy Bolden, Board Member

**Absent:** Jack Gregg, Secretary

**Staff Present:** Jennette Espinosa, Executive Director  
Natasha Roach, Assistant Director  
Jennifer Eusse, Development Specialist  
Jeff Moore, Attorney  
Jason Barth, Accountant

- 1. Roll Call and Call to Order of Regular Meeting:** Meeting was called to order at **6:00 p.m.** by Ken Eaken, President.  
*Identification of Quorum and call to order.*
- 2. Discussion and Action** to approve the Minutes of the May 9th, 2022 Regular Meeting. (Jennette Espinosa, Executive Director)

Motion by Board Member Marce E. Ward, seconded by Treasurer Taylor Girardi

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi,  
Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member  
Jeremy Bolden

**6 - 0 Passed - Unanimously**

3. **Discussion and Action** to approve the 2nd Quarter Financials, October 2021 - March 2022, for the Little Elm Economic Development Corporation for FY2022. (Jason Barth, EDC Accountant)

Motion by Vice President Michel Hambrick, seconded by Board Member Jeremy Bolden

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi,  
Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member  
Jeremy Bolden

**6 - 0 Passed - Unanimously**

4. **Discussion and Action** to approve the First Amendment Ground Lease Purchase and Performance Agreement between Little Elm Hospitality, LLC and Little Elm Economic Development Corporation. (Jennette Espinosa, Executive Director)

Motion by Board Member Marce E. Ward, seconded by Board Member Jeremy Bolden

AYE: President Ken Eaken, Vice President Michel Hambrick, Treasurer Taylor Girardi,  
Council Liaison Michael McClellan, Board Member Marce E. Ward, Board Member  
Jeremy Bolden

**6 - 0 Passed - Unanimously**

5. **Director's Report:** Discuss, Update, and Action, If Needed, Regarding Project, Policies, Events, Activities, and Calendar Pertaining to EDC. (Jennette Espinosa, Executive Director)

6. **Executive Closed Session of the Board of Directors.** The Little Elm EDC will now hold a Closed Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:

**(A) Section 551.087** of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business prospect.

**Board did not enter in to Executive Session**

7. **Reconvene into Open Session:** Take any action related to Executive Session

8. Adjournment. Meeting was adjourned at **6:59 p.m.**

Respectfully,

Jennette Espinosa, Executive Director

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_ 2022



**Date:** 07/11/2022  
**Agenda Item #:** 3.  
**Department:** Economic Development Corporation  
**Strategic Goal:** Maintain operational integrity and viability  
**Staff Contact:** Jennette Espinosa, EDC Executive Director

---

**AGENDA ITEM:**

**Appointment of Little Elm EDC Board Member** to the serve on the Little Elm Local Development Corporations Board of Directors. (Jennette Espinosa, Executive Director)

---



**Date:** 07/11/2022  
**Agenda Item #:** 4.  
**Department:** Economic Development Corporation  
**Strategic Goal:** Maintain operational integrity and viability  
**Staff Contact:** Jennette Espinosa, EDC Executive Director

---

**AGENDA ITEM:**

**Discussion and Action** to consider and / or amend the financial thresholds for Little Elm EDC expenses for the Executive Director and Assistant Director. (Jennette Espinosa, Executive Director)

**DESCRIPTION:**

The request is to consider giving the Assistant Director ability to approve all, routine and monthly expenses up to the amount of \$1,500.00. This will allow for more involvement and oversight regarding the day-to-day finances and adherence to the established budget. In addition, the request is to also consider increasing the approval amount for the Executive Director up to the amount of \$10,000.00. These approval amounts do not apply to monthly credit card statements which will still require the signature of the Treasurer for approval.

**RECOMMENDED ACTION:**

Staff recommends that the Board approve the increase in approval thresholds as presented.

---



**Date:** 07/11/2022  
**Agenda Item #:** 5.  
**Department:** Economic Development Corporation  
**Strategic Goal:** Maintain operational integrity and viability  
**Staff Contact:** Jennette Espinosa, EDC Executive Director

---

**AGENDA ITEM:**

**Discussion and Action** to approve an Amendment to the categories, Land Acquisition for Redevelopment in the amount of \$2.5 Million, and for Incentives in the amount of \$216,010.00 for Budget FY 2021-2022.  
(Jennette Espinosa, Executive Director)

**DESCRIPTION:**

This amendment allows the Little Elm EDC to purchase additional property in the Lakefront District and adjust Incentives for Economic Development projects.

**BUDGET IMPACT:**

The Receipted Contract with financial details will be provided prior to the meeting. Earnest money in the amount of \$10,000 has been paid, refundable in full less \$100.00. The amendment will allow for the full purchase price of the property, in cash, requiring no other source of revenue or financial obligation.

**RECOMMENDED ACTION:**

Staff recommends that the Budget Amendment be approved..

---

**Attachments**

EDC Budget FY 20211 -2022

## Little Elm EDC FY 2022-2023 BUDGET

ACCOUNT CODES	ACCOUNT DESCRIPTION	BUDGET 2021-2022	ESTIMATED 2021-2022
<b>Revenue and Other Sources</b>			
811-5132	CITY SALES TAXES	2,871,734	3,272,516
811-5135	TRANSFER TO TIRZ #3 LAKEFRONT	(90,000)	(81,500)
811-5141	CONTRA TEXAS FIRST 380 AGREEMENT ('17-'21)	(21,500)	-
811-5142	CONTRA GOVEIA/GCRE 380 AGREEMENT ('18-'25)	(40,000)	(28,000)
811-5143	CONTRA ASCO ('22-'26')	(21,500)	-
811-5400	MISCELLANEOUS REVENUE	7,500	100
811-5611	INTEREST EARNINGS	35,000	38,796
811-5678	CONCESSIONS - HYDROUS	30,000	30,000
811-5683	GROUND LEASE INCOME - HULA HUT	20,000	23,000
811-5684	INTEREST REVENUE - TEXAS FIRST	125,347	125,347
811-5684	PRINCIPAL REVENUE - TEXAS FIRST	80,212	80,212
811-5802	CHADNIC- MULTI FAMILY	69,696	69,696
811-5803	CHADNIC-RETAIL	-	-
811-5804	INTERGOVT. INCOME		100,000
811-5805	TIN MAN RENTAL INCOME	-	-
	TIN MAN TRIPLE NET INCOME		4,091
811-8900	LOAN PROCEEDS	-	-
811-8912	MUSTANG (8 of 10)	100,000	100,000
<b>Total Revenues and Other Sources</b>		<b>3,166,490</b>	<b>3,734,258</b>

<b>Expenditures</b>			
<b>Principal and Interest on Debt</b>			
811-6004	PRINCIPAL-LOAN CONSOLIDATION #98337	516,824	516,824
811-6005	INTEREST-LOAN CONSOLIDATION #98337	157,680	157,680
811-6009	PRINCIPAL-LINCOLN PARK #233639	121,629	121,629
811-6010	INTEREST-LINCOLN PARK #233639	39,819	39,819
811-6011	PRINCIPAL-TEXAS FIRST #246732	95,747	95,747
811-6012	INTEREST-TEXAS FIRST#246732	82,280	82,280
811-6013	PRINCIPAL-TIN MAN #264078	0	-
811-6014	INTEREST-TIN MAN #264078	195,311	195,311
<b>Total Debt Expenditures</b>		<b>1,209,291</b>	<b>1,209,291</b>

<b>Personnel Costs</b>			
811-6108-80-00	SALARIES AND WAGES	316,363	308,712
811-6114-80-00	TMRS	48,966	48,071
811-6115-80-00	LONGEVITY PAY	1,020	1,200
811-6117-80-00	EDUCATION PAY	1,200	1,200
811-6118-80-00	CAR ALLOWANCE	6,912	6,912
811-6141-80-00	SOCIAL SECURITY	27,046	27,301
811-6142-80-00	GROUP INSURANCE	33,636	29,231
811-6143-80-00	WORKERS COMPENSATION	573	-
811-6145-80-00	TEXAS EMPLOYMENT COMMISSION	84	84
<b>Total Personnel Expenditures</b>		<b>435,799</b>	<b>422,711</b>

## Little Elm EDC FY 2022-2023 BUDGET

ACCOUNT CODES	ACCOUNT DESCRIPTION	BUDGET 2021-2022	ESTIMATED 2021-2022
<b>Other Operating Costs</b>			
811-6211-80-00	LEGAL SERVICES (Attorney)	25,000	10,000
811-6214-80-00	PROFESSIONAL SERVICES	30,000	3,500
811-6229-80-00	OFFICE DEVELOPMENT	10,000	10,000
811-6231-80-00	CONTRACTED SERVICES	75,000	62,000
811-6232-80-00	GENERAL WEBSITE	2,500	2,500
811-6272-80-00	COMMUNICATIONS	4,000	4,000
811-6276-80-00	TUITION REIMBURSEMENT	2,500	2,500
811-6278-80-00	LEASE PAYMENTS	10	-
811-6342-80-00	OFFICE SUPPLIES	1,000	1,000
811-6343-80-00	ADVERTISING	287,173	200,000
811-6344-80-00	PRINTING AND MAILING	3,500	750
811-6347-80-00	TRADE SHOWS EXPENSE	40,000	30,000
811-6354-80-00	EMPLOYEE & PUBLIC RELATIONS	10,000	5,000
811-6711-80-00	GASOLINE AND OIL	500	250
811-6712-80-00	DUES & MEMBERSHIPS	12,500	6,000
811-6715-80-00	SCHOOLS AND SEMINARS	25,000	2,000
811-6719-80-00	UNIFORMS	1,000	1,000
811-6729-80-00	LAND ACQUISITION FOR REDEVELOPMENT	-	2,500,000
811-6730-80-00	INCENTIVES	935,426	1,151,436
811-6740-80-00	TIN MAN SHELL BUILDING	5,743,789	5,743,789
811-6741-80-00	TIN MAN OPERATING EXPENSES	-	-
<b>Total Operating Expenditures</b>		<b>7,208,898</b>	<b>9,735,725</b>
<b>Transfers to Other Funds</b>			
811-6250-80-00	CONTRACT WITH TOWN	30,000	30,000
811-6252-80-00	TRANSFER TO TIRZ #1 ROSEBRIAR (KROGER)	105,000	105,000
<b>Total Transfers</b>		<b>135,000</b>	<b>135,000</b>
<b>TOTAL EXPENDITURES</b>		<b>8,988,988</b>	<b>11,502,726</b>
<b>EXCESS REVENUES OVER (UNDER) EXPENDITURES</b>		<b>(5,822,499)</b>	<b>(7,768,468)</b>



**Date:** 07/11/2022  
**Agenda Item #:** 6.  
**Department:** Economic Development Corporation  
**Strategic Goal:** Maintain operational integrity and viability  
**Staff Contact:** Jennette Espinosa, EDC Executive Director

---

#### **AGENDA ITEM:**

**Discussion and Action** to approve the Amended and Restated Development Agreement between the Town of Little Elm, Little Elm Economic Development Corporation and Palladium Little Elm Phase II, LTD. (Jennette Espinosa, Executive Director)

#### **DESCRIPTION:**

This Amended and Restated Development Agreement revises the financial obligations of the developer for the construction of the eight (8) foot Masonry Wall. This revision also provides that the wall be constructed, or caused to be constructed by Little Elm EDC with a third-party contractor, Ratliff Hardscape, and in accordance with the proposal provided by Ratliff. The Town will treat this as a capital project.

#### **BUDGET IMPACT:**

##### **Obligations of the Developer:**

- **Payment of Infrastructure Fee by Developer.** Developer covenants and agrees to pay an infrastructure fee to the LEEDC in the amount of **Seventy-Three Thousand Four Hundred Thirty-Seven and No/100 Dollars (\$73,437.00)** within thirty (30) days of the Effective Date of this Agreement.

##### **Obligations of the Town and the EDC:**

- **Payment for the Screening Wall by Town.** The Town covenants and agrees to contribute the sum of **Eighty-Seven Thousand Six Hundred Fifty-One and No/100 Dollars (\$87,651.00)** to the LEEDC towards the construction of the Screening Wall within thirty (30) days of receipt of paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the Town, and in an amount of **One Hundred Eighty-Nine Thousand Five Hundred Twenty-Five and 50/100 Dollars (\$189,525.50)**.
  - This amount was originally to be paid to the Developer
- **Payment for the Screening Wall by LEEDC.** The LEEDC covenants and agrees to contribute the sum of **Twenty-Eight Thousand Four Hundred Thirty-Seven and 50/100 Dollars (\$28,437.50)** towards the construction of the Screening Wall.
  - This amount was originally to be paid to the Developer.
- **Construction of the Screening Wall.** LEEDC covenants and agrees to cause the commencement of construction of the Screening Wall within sixty (60) days of the Effective Date of this Agreement. The

construction will be in accordance with, and per the Ratliff Hardscape proposal attached hereto as Exhibit C and made a part hereof as if set forth in full. Further, LEEDC covenants and agrees to submit to the Town paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the Town, and in an amount of **One Hundred Eighty-Nine Thousand Five Hundred Twenty-Five and 50/100 Dollars (\$189,525.50)** within thirteen (13) months of the Effective Date of this Agreement.

**RECOMMENDED ACTION:**

Staff recommends approval of the Amended and Restated Development Agreement as presented.

---

**Attachments**

Amended and Restated DA for Palladium Wall

**TOWN OF LITTLE ELM, TEXAS,  
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION  
AND  
PALLADIUM LITTLE ELM PHASE II, LTD.**

**AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

This **AMENDED AND RESTATED DEVELOPMENT AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality, 100 W. Eldorado Parkway, Little Elm, Texas 75068, (hereinafter referred to as the "Town"), the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation, 100 W. Eldorado Parkway, Little Elm, Texas 75068 (hereinafter referred to as the "LEEDC"), and **PALLADIUM LITTLE ELM PHASE II, LTD.**, a Texas limited partnership, 13455 Noel Road, Suite 400, Dallas, Texas 75240 (hereinafter referred to as the "Developer"), for the purposes and considerations stated below:

**WHEREAS**, the Developer is the owner of approximately 4.096-acre tract of land consisting of Lot 1, Block A of the Palladium II Addition, an addition to the Town of Little Elm, Denton County, Texas, as more particularly described and or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the "Property"); and

**WHEREAS**, Developer has undertaken the construction of that certain 324-unit multifamily development with one 4-story wrapped building and one 4-story surface parking building and approximately 12,000 square feet of retail including the necessary infrastructure improvements to support the development, and required parking spaces in Little Elm, Denton County, Texas (the "Project") located on the Property; and

**WHEREAS**, the Town had previously approved the Developer's construction plans which included a retaining wall, but not of the specific length and materials the Town wishes to have on the Property, and the Town now requires the Developer to have constructed by the LEEDC an eight foot (8') tall screening wall along the north property line of the Property as depicted in *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the "Screening Wall"), with such construction to be in compliance with the Town's ordinance, rules and regulations.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town, LEEDC and Developer agree as follows:

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

## SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

## SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter until **March 31, 2023**, unless terminated sooner under the provisions hereof.

## SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Amended and Restated Development Agreement, together with all exhibits and schedules attached to this Agreement from time to time and may be updated, if necessary.
- (b) **Developer.** The word "Developer" means Palladium Little Elm Phase II, Ltd., a Texas limited partnership, its successors and assigns. For the purposes of this Agreement, Palladium's address is 13455 Noel Road, Suite 400, Dallas, Texas 75240.
- (c) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Town, LEEDC, and Developer.
- (d) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth in the section entitled "Events of Default" in this Agreement.
- (e) **LEEDC.** The term "LEEDC" means the Little Elm Economic Development Corporation, a Texas non-profit corporation. For purposes of this Agreement, LEEDC's address is 100 W Eldorado Parkway, Little Elm, Texas 75068.
- (f) **Property.** The word "Property" means the approximately 4.096 acre tract of land consisting of Lot 1, Block A of the Palladium II Addition, an addition to the Town of Little Elm, Denton County, Texas, as more particularly described and or depicted in *Exhibit A* of this Agreement, which is attached hereto and incorporated herein for all purposes.
- (g) **Screening Wall.** The eight foot (8') tall screening wall along the northern property line of the Property being (as that term is defined in the Second and Amended and Restated Chapter 380 Economic Development Program and Agreement), for a distance of approximately 493 linear feet, and with the construction materials and architectural design required to meet the Town's ordinance, rules and regulations as set forth more specifically on *Exhibit B* of this Agreement, which is attached hereto and incorporated herein for all purposes.

---

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

- (h) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.
- (i) **Town.** The word "Town" means the Town of Little Elm, Denton County, Texas, a Texas home-rule municipality. For the purposes of this Agreement, Town's address is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

#### **SECTION 4. AFFIRMATIVE OBLIGATIONS OF THE DEVELOPER.**

The Developer covenants and agrees with Town and LEEDC that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Payment of Infrastructure Fee by Developer.** Developer covenants and agrees to pay an infrastructure fee to the LEEDC in the amount of **Seventy-Three Thousand Four Hundred Thirty-Seven and No/100 Dollars (\$73,437.00)** within thirty (30) days of the Effective Date of this Agreement.
- (b) **Completion of Construction of Screening Wall.** The parties agree that the construction of the Screening Wall by the LEEDC will be completed within six (6) months from the Effective Date of this Agreement. Completion will be upon acceptance by the Town. Subject to the Town Manager's discretion, the Town Manager may authorize a one-time extension of three (3) additional months to complete the Screening Wall.
- (c) **Maintenance.** Upon completion of construction of the Screening Wall, the future maintenance and cost thereof shall be the responsibility of the Developer and Town, or any subsequent owner of the Property, subject to any future tie in of any adjoining homeowner to the north of the Screening Wall.

#### **SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE TOWN AND LEEDC.**

Town and LEEDC covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Payment for the Screening Wall by Town.** The Town covenants and agrees to contribute the sum of **Eighty-Seven Thousand Six Hundred Fifty-One and No/100 Dollars (\$87,651.00)** to the EDC towards the construction of the Screening Wall within thirty (30) days of receipt of paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the Town, totaling **One Hundred Eighty-Nine Thousand Five Hundred Twenty-Five and 50/100 Dollars (\$189,525.50)**.
- (b) **Payment for the Screening Wall by LEEDC.** The LEEDC covenants and agrees to contribute the sum of **Twenty-Eight Thousand Four Hundred Thirty-Seven and 50/100 Dollars (\$28,437.50)** towards the construction of the Screening Wall.

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

- (c) **Construction of the Screening Wall.** LEEDC covenants and agrees to cause the commencement of construction of the Screening Wall within sixty (60) days of the Effective Date of this Agreement with construction completion within six (6) months of the Effective Date of this Agreement. Subject to the Town Manager's discretion, the Town Manager may authorize a one-time extension of three (3) additional months to complete the Screening Wall. The construction will be in accordance with, and per the Ratliff Hardscape proposal attached hereto as *Exhibit C* and made a part hereof as if set forth in full. Further, LEEDC covenants and agrees to submit to the Town paid invoices, paid receipts, or other documentation for the Screening Wall in a form acceptable to the Town, totaling **One Hundred Eighty-Nine Thousand Five Hundred Twenty-Five and 50/100 Dollars (\$189,525.50)** within nine (9) months of the Effective Date of this Agreement.

## SECTION 6. EVENTS OF DEFAULT.

Each of the following events shall constitute an Event of Default under this Agreement after compliance with the notice and opportunity to cure provisions set forth in Section 7.

- (a) **General Event of Default.** Failure of Developer, LEEDC, or Town to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement.
- (b) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer.
- (c) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the Town to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes.

## SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

Upon the occurrence of an event under Section 6 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have ten (10) days to cure said default. Should said default remain uncured after the applicable notice period, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

Notwithstanding anything contained in this Agreement to the contrary, Town shall not hold up the issuance of any Certificates of Occupancy for the Project related to the completion or non-completion of the Screening Wall.

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

## SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party which consent shall not be unreasonably withheld, conditioned or delayed.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. LEEDC and Developer each warrant and represent that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Entire Agreement.** This Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.
- (h) **Exactions/Infrastructure Costs.** Developer has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with Section 212.904 of the Texas Local Government Code; however,

---

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

notwithstanding the foregoing, Developer hereby releases the Town from any and all liability under Section 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

- (i) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed. There shall be no Force Majeure event for the failure to timely pay sums due and owing hereunder.
- (j) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

If to the Town:           Town of Little Elm, Texas  
100 W. Eldorado Parkway  
Little Elm, Texas 75068  
Attn: Matt Mueller, Town Manager  
Telephone: (214) 975-0405  
Email: [mmueller@littleelm.org](mailto:mmueller@littleelm.org)

if to Developer:       Palladium Little Elm Phase II, Ltd.  
13455 Noel Road, Suite 400  
Dallas, Texas 75240  
Attn: Thomas E. Huth  
Telephone: (972) 774-4450  
Email: [thuth@palladiumusa.com](mailto:thuth@palladiumusa.com)

if to LEEDC:           Little Elm Economic Development Corporation  
100 W. Eldorado Parkway  
Little Elm, Texas 75068  
Attn: Jennette Espinosa, Executive Director  
Telephone: (214) 975-0455  
Email: [jke@littleelm.org](mailto:jke@littleelm.org)

- (k) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have

---

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

- (l) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- (m) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (n) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the Town, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.
- (o) **Undocumented Workers Provision.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120<sup>th</sup> day after the date the Town notifies Developer of the violation.
- (p) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (q) **Iran, Sudan and Foreign Terrorist Organizations.** If § 2252.153 of the Texas Government Code is applicable to this Agreement, by signing below Developer hereby represent, verify and warrant that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a “foreign terrorist organization” as defined in § 2252.151 of the Texas Government Code.

---

Initial for Identification

Town of Little Elm

LEEDC

Palladium

- (r) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (s) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87<sup>th</sup> Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.
- (t) **Waiver of Texas Government Code § 3000.001 et seq.** With respect to any and all structures to be constructed on the Property pursuant to this Agreement, Developer hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

**SECTION 9. REPRESENTATIONS AND WARRANTIES OF TOWN AND LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION.**

Town and LEEDC (the "Contributors") hereby represent and warrant to Developer, as follows:

- (a) **Power and Authority.** Contributors have the full right, authority and power to enter into this Agreement and to consummate the transactions provided for herein. This Agreement and all other related documents executed and delivered or to be executed and delivered by LEEDC or Town constitute legal, valid, and binding obligations of LEEDC or Town, respectively, enforceable in accordance with their terms, and there are no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Agreement and all other related documents executed and delivered or to be executed and delivered by LEEDC or the Town. All requisite action necessary to authorize LEEDC and/or the Town to enter into this Agreement and to carry out the respective obligation of the Contributors hereunder or thereunder have been, or will have been taken by the Effective Date. No permission, approval or consent by third parties or governmental authorities is required in order for Contributors to consummate this Agreement all other related documents executed and delivered or to be executed and delivered by either of the Contributors in connection with this Agreement and the transactions contemplated herein and there.
- (b) **No Violations.** The execution, delivery and performance by Contributors of their respective obligations under this Agreement will not conflict with or result in a breach of any law, governmental rule, regulations, judgment, decree or order by which Contributors

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

is bound, or by any of the provisions of any contract to which either of the Contributors is a party or by which either of the Contributors is bound.

- (d) No Litigation. There is no litigation, action, suit, proceeding or investigation pending, or threatened, before any agency, court or other governmental authority affecting the Contributors which relates to the Property or the use thereof or which would prevent or inhibit the construction of the Screening Wall.

**[The Remainder of this Page Intentionally Left Blank]**

---

Initial for Identification

Town of Little Elm

LEEDC

Palladium

Development Agreement

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be duly executed.

**TOWN:**

**TOWN OF LITTLE ELM, TEXAS,**  
A Texas home-rule municipality

By: \_\_\_\_\_  
Curtis J. Cornelious, Mayor

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Caitlan Biggs, Town Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert F. Brown, Town Attorney

**STATE OF TEXAS**

§

§

**COUNTY OF DENTON**

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by Curtis J. Cornelious, Mayor of the Town of Little Elm, Texas, a Texas home-rule municipality, on behalf of said municipality.

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

Initial for Identification: \_\_\_\_\_

Town of Little Elm

LEEDC

Palladium

**LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION,**  
A Texas non-profit corporation

By: \_\_\_\_\_  
Ken Eaken, President

Date: \_\_\_\_\_

**STATE OF TEXAS**

§

§

**COUNTY OF DENTON**

§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by Ken Eaken, President of the Little Elm Economic Development Corporation, a Texas non-profit corporation, on behalf of said corporation.

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

Initial for Identification: \_\_\_\_\_

Town of Little Elm

LEEDC

Palladium

**DEVELOPER:**

**PALLADIUM LITTLE ELM PHASE II, LTD.**  
a Texas limited partnership

Palladium Little Elm Phase II GP, LLC  
a Texas limited liability company  
Its general partner

By:   
Thomas E. Huth  
President and Chief Executive Officer

Date: 6/29/2022

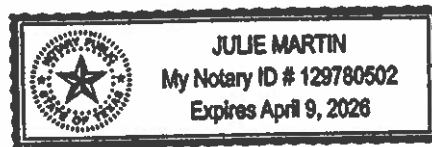
STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

This instrument was acknowledged before me on the 29<sup>th</sup> day of June, 2022, by Thomas E. Huth, President and Chief Executive Officer of Palladium Little Elm Phase II GP, LLC, a Texas limited liability company, the general partner of Palladium Little Elm Phase II, Ltd., a Texas limited partnership, on behalf of said limited partnership.

  
Notary Public, State of Texas



Initial for Identification: \_\_\_\_\_  
Town of Little Elm LEEDC Palladium

***Exhibit A***

[Legal Description and/or Depiction  
of the Property]

---

Initial for Identification:      Town of Little Elm      LEEDC      Palladium 



**Exhibit B**

[Depiction of the Screening Wall]



Initial for Identification: \_\_\_\_\_  
Town of Little Elm LEEDC Palladium

### ***Exhibit C***

#### **Estimate and Financing Costs of Construction and materials for Screening Wall**

##### **Developer Screening Wall Financing Details: Palladium Little Elm Phase II, Ltd. Contribution**

Total Cost of Wall including contingency	<b>Developer Section = \$101,875.00</b> <b>TOLE = \$87,651.00</b> <b><u>Total \$189,526.00</u></b>
Developer credit from their wall design	<b>(\$101,875.00 – \$45,000)</b> <b><u>Total \$56,875.00</u></b>
Split value of additional costs with TOLE and Developer	<b>(\$56,875.00/2)</b> <b><u>Total \$28,437.50</u></b>
Developer's total contribution	<b>\$45,000 + \$28,437.50</b> <b>Total \$73,437.50</b>

##### **EDC Contribution**

Total Cost of Wall remaining after Developer Contribution	<b>\$116,088.50</b>
EDC Contribution of the Developer only portion	<b><u>\$101,875.00 - \$73,437.50</u></b> <b>Total \$28,437.50</b>

##### **TOLE Contribution**

Total Cost of wall remaining after Developer and EDC Contribution for the Town to pay	<b>\$87,651.00</b>
---	--------------------

Initial for Identification:

Town of Little Elm

LEEDC

Palladium

Development Agreement

Wesley Brandon  
Town of Little Elm  
100 West Eldorado Pkwy  
Little Elm, Texas 75068  
wbrandon@litlelm.org



EXHIBIT "A"  
**PROPOSAL**

PROJECT: Palladium Wall  
LOCATION: Little Elm, Texas

DATE: 1/18/22  
PROPOSAL NO: 30-22-01-18-02

*Ratliff Hardscape, Ltd. proposes to furnish equipment, materials, and labor to perform the following work for the referenced project.*  
*All bid items and quantities included in the scope of work were based on plans dated, N/A, by N/A.*

ITEM NO	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
01	Permits	1	LS	950.00	\$ 950.00
02	Structural Inspections	1	LS	2,200.00	\$ 2,200.00
03	Site Facilities	1	LS	625.00	\$ 625.00
04	8'-0" Ht. Stacked Stone Wall (to match Little Elm Typical Stone Wall)	493	LF	320.00	\$ 157,760.00
05	8'-6" Ht. Primary Stone Columns (Re 182/S101)	9	EA	1,900.00	\$ 17,091.00
06	Project Contingency	1	LS	10,000.00	\$ 10,000.00
TAX EXEMPT (No taxes required) Little Elm, Texas 8.25% %					
<b>TOTAL</b>					<b>\$ 189,526.00</b>

**TERMS AND CONDITIONS**

THIS PROPOSAL IS VALID FOR THIRTY (30) DAYS FROM THE DATE OF THIS PROPOSAL. THIS PROPOSAL AND ITS TERMS AND CONDITIONS OR ANY OTHER SPECIAL CONDITIONS (EXHIBIT "B") SHALL BECOME PART OF THE CONTRACT AS EXHIBIT "A". A CONTRACT SHALL BE PROVIDED BY THE OWNER, GENERAL CONTRACTOR, OR RATLIFF HARDSCAPE, LTD., AND EXECUTED PRIOR TO COMMENCEMENT OF ANY WORK. THE ABOVE QUANTITIES HAVE BEEN ESTIMATED; HOWEVER, THIS PROPOSAL IS A UNIT PRICE BASIS WITH PAYMENTS TO BE MADE BY THE HIRING OWNER OR GENERAL CONTRACTOR BY USING FIELD MEASURED QUANTITIES OF WORK COMPLETED. RATLIFF HARDSCAPE, LTD. SHALL SUBMIT BY THE END OF EACH MONTH, PAYMENT ESTIMATES, TO THE OWNER OR GENERAL CONTRACTOR WHICH INCLUDE ALL OF THE COMPLETED WORK PLUS ANY MATERIAL ON HAND FOR THE UNCOMPLETED PORTION. THE RETAINAGE AMOUNT TO BE WITHHELD FROM EACH MONTHLY INVOICE SHALL BE SPECIFIED BY THE HIRING OWNER OR GENERAL CONTRACTOR. IF NOT SPECIFIED, NO RETAINAGE WILL BE WITHHELD. PAYMENT TERMS ARE NET FIFTEEN (15) DAYS FROM THE DATE OF THE INVOICE. ALL INVOICES NOT RECEIVED IN FULL BY THE DUE DATE SHALL BEAR INTEREST FROM THE DUE DATE UNTIL THE DATE FULL PAYMENT IS RECEIVED AT RATE OF 10% PER ANNUM. SALES TAX MUST BE APPLIED UNLESS MATERIAL USED FOR REALTY IMPROVEMENTS OF A TAX EXEMPT ENTITY OR BY RECEIPT OF A "SALES TAX EXEMPT" CERTIFICATE. PLEASE REVIEW ALL THE SPECIAL CONDITIONS PROVIDED HEREIN AS EXHIBIT "B".

PLEASE SIGN THIS PROPOSAL AND RETURN ONE (1) ORIGINAL TO OUR OFFICE. YOUR ACCEPTANCE OF THIS PROPOSAL SHALL CONSTITUTE THE INTENT TO ENGAGE INTO A CONTRACT WITH RATLIFF HARDSCAPE, LTD. TO PERFORM THE ABOVE REFERENCED WORK.

**ACCEPTED:**

\_\_\_\_\_  
TOWNSHIP GENERAL CONTRACTOR

By: \_\_\_\_\_

Signature

Print Name

Its: \_\_\_\_\_

Title

**RESPECTFULLY SUBMITTED:**

**Ratliff Hardscape, Ltd.**  
(CONTRACTOR / SUB-CONTRACTOR)

By: \_\_\_\_\_

Signature

Booder McWhorter

Print Name

Its: President & CEO

Title

17410 Midway Branch • Fort Worth, TX 76155  
Phone: 817-416-2500 • Fax: 817-416-9900  
www.ratliffcompanies.com

PAGE 1 OF 6

Initial for Identification: \_\_\_\_\_

Town of Little Elm

LEEDC

Palladium

Development Agreement



**Date:** 07/11/2022  
**Agenda Item #:** 7.  
**Department:** Economic Development Corporation  
**Strategic Goal:** Maintain operational integrity and viability  
**Staff Contact:** Jennette Espinosa, EDC Executive Director

---

#### **AGENDA ITEM:**

**Discussion and Action** to approve Amended and Restated Reimbursement Agreement and Performance Agreement between Tax Increment Zone Number Three, Town of Little Elm and Little Elm EDC. (Jennette Espinosa, Executive Director)

#### **DESCRIPTION:**

The EDC has a loan contract with Government Capital to fund certain project costs within TIRZ #3. The TIRZ #3 desires to reimburse the EDC for a portion of the loan with the Town ad valorem taxes and deposited into TIRZ #3 Tax Increment Fund from the Hotel constructed on the Property but not to exceed **sixty Thousand and No/100 Dollars (\$60,000.00)** per year, and the total aggregate payment of **Eight Hundred Forty Thousand and No/100 Dollars (\$840,000.00)**.

#### **Obligations of the EDC**

- The EDC covenants and agrees to provide to the Town or TIRZ #3 upon request any documentation reflecting the Government Capital loan to finance TIRZ #3 project costs.

#### **Obligations of TIRZ #3**

- **Payments Solely from TIRZ # 3 Tax Increment Fund.** Payment will be made solely from funds available in the TIRZ #3 Increment Fund, as such funds are on deposit in the TIRZ #3 TIF and which are attributed to ad valorem taxes paid and collected on the property (Exhibit A). The Amendment aligns with the timing of the development on said property.
- **Grant Amount.** TIRZ # 3 covenants and agrees to pay EDC annually during the Term of this Agreement one hundred percent (100%) of the monies collected from ad valorem taxes and deposited into the TIRZ # 3 Tax Increment Fund attributable to the revenues paid and collected on the Property (Exhibit A) but not to exceed the Grant Amount **Sixty Thousand and No/100 Dollars (\$60,000.00)** per year. The aggregate of payments pursuant to this Agreement shall not exceed **Eight Hundred Forty Thousand and No/100 Dollars (\$840,000.00)**.
- **Frequency and Amount of Payment.** The frequency and amount of payment to EDC under this Agreement shall coincide with the frequency and amount of payments made by the various taxing units into the TIRZ # 3 Tax Increment Fund from fiscal year to fiscal year. Subject to all limitation and conditions precedent contained in this Agreement, TIRZ # 3 agrees to make Grant Amount payments to EDC within thirty (30) days after receipt of payments into the TIRZ # 3 Tax Increment Fund.

**BUDGET IMPACT:**

The **Grant Amount** equal to the amount of **Sixty Thousand and No/100 Dollars (\$60,000.00)** per year, paid from funds solely available in the TIRZ # 3 Tax Increment Fund, and generated solely from ad valorem taxes collected on the Property (Exhibit A). The aggregate of payments pursuant to this Agreement shall not exceed **Eight Hundred Forty Thousand and No/100 Dollars (\$840,000.00)**

**RECOMMENDED ACTION:**

Staff recommends that the Board approve the Amended and Restated Agreement as presented.

---

**Attachments**

Amended and Restated Reimbursement TIRZ #3 and EDC - hotel

**TAX INCREMENT REINVESTMENT ZONE NUMBER THREE,  
TOWN OF LITTLE ELM, TEXAS,  
AND  
LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION,**

**AMENDED AND RESTATED REIMBURSEMENT AGREEMENT AND  
PERFORMANCE AGREEMENT**

This **AMENDED AND RESTATED REIMBURSEMENT AGREEMENT AND PERFORMANCE AGREEMENT** (hereinafter referred to as this “Agreement”) is made and entered into by and among the **TAX INCREMENT REINVESTMENT ZONE NUMBER THREE, TOWN OF LITTLE ELM, TEXAS**, (hereinafter referred to as the “TIRZ # 3”), a tax increment reinvestment zone created by the Town of Little Elm, Texas, pursuant to Chapter 311 of the Texas Tax Code, as amended, and the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “LEEDC”), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, in accordance with the provisions of the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended (the “Act”), the Town Council of the Town of Little Elm, Texas, a Texas home rule municipality (hereinafter referred to as the “Town”) adopted Ordinance No. 1175 on October 15, 2013, which ordinance, among other things, (i) created, established, and designated an area within the corporate limits of the Town as “Reinvestment Zone Number Three, Town of Little Elm, Texas” (the “Reinvestment Zone”), (ii) created a Board of Directors for the Reinvestment Zone, and (iii) established a tax increment fund for the Reinvestment Zone; and

**WHEREAS**, Section 311.010(b) of the Act provides that the Board of Directors of TIRZ # 3 (hereinafter referred to as the “Board”) may enter into agreements as the Board consider necessary or convenient to implement the Project and Financing Plan and achieve its purposes; and

**WHEREAS**, Section 311.010(h) of the Act authorizes the Board subject to the approval of the Town Council of the Town, “to implement the project plan and reinvestment zone financing plan and achieve their purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone for activities that benefit the zone and stimulate business and commercial activity in the zone. For purposes of this subsection, on approval of the municipality or county, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code. The approval required by this subsection may be granted in an ordinance, in the case of a zone designated by a municipality, or in an order, in the case of a zone designated by a county, approving a project plan or reinvestment zone financing plan or approving an amendment to a

project plan or reinvestment zone financing plan”; and

**WHEREAS**, the Board has concluded and hereby finds that this Agreement clearly promotes economic development in the Town of Little Elm, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution and Section 311.010(h) of the Act by assisting in the development and diversification of the economy of the State of Texas and the Town, by eliminating unemployment or underemployment in the State of Texas, and the Town, and by the development or expansion of commerce within the State of Texas, and the Town; and

**WHEREAS**, the Board has determined that it is in the best interest of TIRZ # 3 to contract with LEEDC, in order to provide for the efficient and effective implementation of certain aspects of the TIRZ # 3’s Project and Financing Plan; and

**WHEREAS**, LEEDC entered into a loan agreement with Government Capital to fund certain project costs within TIRZ # 3; and

**WHEREAS**, TIRZ # 3 desires to reimburse LEEDC for said loan with the Town ad valorem taxes collected and deposited into TIRZ # 3 Tax Increment Fund from the Hotel constructed on the Property (*Exhibit A*) but not to exceed **Sixty Thousand and No/100 Dollars (\$60,000.00)** per year; and

**WHEREAS**, the LEEDC is a Type A economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended, and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

**WHEREAS**, Section 501.103 of the Texas Local Government Code defines the term “project” to mean “expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to: (1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; (2) telecommunications and Internet improvements . . .”; and

**WHEREAS**, the LEEDC’s Board of Directors have determined the financial assistance provided is consistent with and meets the definition of “project” as that term is defined in Section 501.103 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TIRZ # 3 and the LEEDC agree as follows:

## **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall

be considered part of the mutual covenants, consideration and promises that bind the parties.

## **SECTION 2. TERM.**

This Agreement shall be effective as of the Effective Date, and shall continue thereafter until **February 1, 2038**, unless terminated sooner under the provisions hereof. This Agreement shall be continued in effect for the purposes of paying LEEDC any monies from the TIRZ # 3 Tax Increment Fund due and payable by January 31, 2038.

## **SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Amended and Restated Reimbursement Agreement and Performance Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any, authorized pursuant to Section 311.010 of the Act.
- (c) **Board.** The word “Board” means the Board of Directors of TIRZ # 3 authorized by Section 311.009 of the Act. For the purposes of this Agreement, Board’s address is 100 W. Eldorado Parkway, Little Elm, Texas 75068.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between TIRZ # 3 and the LEEDC.
- (e) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (f) **Grant Amount.** The words “Grant Amount” mean a grant equal to the amount of **Sixty Thousand and No/100 Dollars (\$60,000.00)** per year, paid from funds solely available in the TIRZ # 3 Tax Increment Fund, and generated solely from ad valorem taxes collected on the Property [i.e. Area 4]. The aggregate of payments pursuant to this Agreement shall not exceed **Eight Hundred Forty Thousand and No/100 Dollars (\$840,000.00)**.
- (g) **LEEDC.** The term “LEEDC” means the Little Elm Economic Development Corporation, a Type A economic development corporation, and a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 100 W. Eldorado Parkway, Little Elm, Texas 75068.
- (h) **Property.** The word “Property” means the approximately 2.43-acre tract of land

comprising the hotel, as depicted in said survey attached hereto as **Exhibit A**, which is incorporated herein for all purposes.

- (i) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.
- (j) **TIRZ # 3.** The words “TIRZ # 3” mean the tax increment financing reinvestment zone named Tax Increment Reinvestment Zone Number Three, Town of Little Elm, Texas, created by Town Ordinance No. 1175, approved by the Town Council of the Town on October 15, 2013, as amended, and as authorized by the Act.
- (j) **TIRZ # 3 Tax Increment Fund.** The words “TIRZ # 3 Tax Increment Fund” mean the tax increment fund established pursuant to Section 311.014 of the Act, and Section 6 of Ordinance No. 1175, approved by the Town Council of the Town on October 15, 2013.
- (m) **Town.** The word “Town” means the Town of Little Elm, Denton County, Texas, a Texas home-rule municipality. For the purposes of this Agreement, Town’s address is 100 W. Eldorado Parkway, Little Elm, Texas 75068.

#### **SECTION 4. OBLIGATIONS OF LEEDC.**

The LEEDC covenants and agrees while this Agreement is in effect the LEEDC shall comply with the following terms and conditions:

- (a) **Documentation on Government Capital Loan.** LEEDC covenants and agrees to provide to the Town or TIRZ # 3 upon request any documentation reflecting the Government Capital loan to finance TIRZ # 3 project costs.
- (b) **Performance.** The LEEDC agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the Town, TIRZ # 3 and LEEDC.

#### **SECTION 5. OBLIGATIONS OF TIRZ # 3.**

TIRZ # 3 covenants and agrees while this Agreement is in effect TIRZ # 3 shall comply with the following terms and conditions:

- (a) **Payments Solely from TIRZ # 3 Tax Increment Fund.** In consideration of LEEDC’s obligations and expenditures including the Government Capital loan to finance TIRZ # 3 project costs, TIRZ # 3 and LEEDC agree, subject to the conditions contained in this Agreement, to make an economic development grant to LEEDC in the Grant Amount from current funds in the TIRZ # 3 Tax Increment Fund, as such funds are on deposit in the TIRZ # 3 Tax Increment Fund and which are attributable to ad valorem taxes paid and

collected on the Property [i.e. Area 4]; provided however, that notwithstanding any other provisions to the contrary, the obligation to make Grant Amount payments to LEEDC as described below shall be limited to the Grant Amount. TIRZ # 3 and LEEDC agree that the Grant Amount payments shall be only from the TIRZ # 3 Tax Increment Fund, subject to the conditions and limitations set out in this Agreement, and only to the extent such funds are on deposit or to be deposited in the TIRZ # 3 Tax Increment Fund.

- (b) **Grant Amount.** TIRZ # 3 covenants and agrees to pay LEEDC annually during the Term of this Agreement one hundred percent (100%) of the monies collected from ad valorem taxes and deposited into the TIRZ # 3 Tax Increment Fund attributable to the revenues paid and collected on the Property (Attached Survey, *Exhibit A*) but not to exceed the Grant Amount [Sixty Thousand and No/100 Dollars (\$60,000.00)] per year. The aggregate of payments pursuant to this Agreement shall not exceed **Eight Hundred Forty Thousand and No/100 Dollars (\$840,000.00)**.
- (c) **Frequency and Amount of Payment.** The frequency and amount of payment to LEEDC under this Agreement shall coincide with the frequency and amount of payments made by the various taxing units into the TIRZ # 3 Tax Increment Fund from fiscal year to fiscal year. Subject to all limitation and conditions precedent contained in this Agreement, TIRZ # 3 agrees to make Grant Amount payments to LEEDC within thirty (30) days after receipt of payments into the TIRZ # 3 Tax Increment Fund.
- (d) **Performance.** TIRZ # 3 agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the Town, TIRZ # 3 and LEEDC.

## **SECTION 6. EVENT OF DEFAULT.**

- (a) **General Event of Default.** Failure of LEEDC or TIRZ # 3 to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of LEEDC or TIRZ # 3 to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between the LEEDC and TIRZ # 3 is an Event of Default.

## **SECTION 7. EFFECT OF AN EVENT OF DEFAULT.**

Failure of TIRZ # 3 or LEEDC to comply with or perform any term, obligation or condition of this Agreement shall constitute an Event of Default. The non-defaulting party shall give written notice to the other parties of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. Should said default remain uncured, the non-defaulting party or parties shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

## SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** No Party shall have the right to assign its rights and/or obligations under this Agreement, or any interest herein, without the prior written consent of the other Parties.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. TIRZ # 3 warrants and represents that the individual executing this Agreement on behalf of TIRZ # 3 has full authority to execute this Agreement and bind TIRZ # 3 to the same. LEEDC warrants and represents that the individual executing this Agreement on LEEDC's behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (h) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (i) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85<sup>th</sup> Leg., R.S. (2017)), the LEEDC verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.

- (j) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S. B. 252, 85<sup>th</sup> Leg., R.S. (2017), the Parties covenant and agree that the LEEDC is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

**[The Remainder of this Page Intentionally Left Blank]**

**THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.**

**TIRZ # 3:**

**TAX INCREMENT REINVESTMENT ZONE  
NUMBER THREE, TOWN OF LITTLE ELM,  
TEXAS,**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Chairperson

Date Signed: \_\_\_\_\_

**LEEDC:**

**LITTLE ELM ECONOMIC  
DEVELOPMENT CORPORATION,**  
a Texas non-profit corporation

By: \_\_\_\_\_

Ken Eaken, President

Date Signed: \_\_\_\_\_

***Exhibit A***

[Description of the Property]

Survey

**K&Z**  
SURVEYING

1720 WESTMINSTER  
DENTON, TX 76205  
(940) 383-3448

JOB NUMBER: 18003-10  
DRAWN BY: NAME  
DATE: 07-29-0071  
R.P.A.

KENNETH A. ZOLLINGER