



LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION BOARD OF DIRECTORS

Monday, August 8, 2022 - 6:00 p.m.

**REGULAR MEETING
100 WEST ELDORADO PARKWAY
TOWN OF LITTLE ELM TOWN CENTER
2ND FLOOR GLASS 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 July 11, 2022, Regular Meeting. (Jennette Espinosa, Executive Director)
3. **Discussion and Action** to approve the Economic Development Corporation's Budget for FY 2022-2023. (Jennette Espinosa, Executive Director/ Jason Barth, EDC Accountant)
4. **Discussion and Action** to approve the Second Amended and Restated Performance Agreement between 575th Pizzeria-Little Elm, LLC and Little Elm Economic Development Corporation. (Jennette Espinosa, Executive Director)
5. **Discussion and Action** to approve the Termination of Reimbursement Agreement and Performance Agreement between the Tax Increment Reinvestment Zone Number Three and the Little Elm Economic Development Corporation. (Jennette Espinosa, Executive Director)
6. **Discussion and Action** to approve the First Amendment to Loan Agreement and Series 2021 Note between Little Elm Economic Development Corporation and Southside Bank, a Texas state banking corporation, as assignee of Government Capital Corporation. (Jennette Espinosa, Executive Director)
7. **Director's Report:** Discuss, Update, and Action, If Needed, Regarding Project, Policies, Events, Activities, and Calendar Pertaining to EDC. (Jennette Espinosa, Executive Director)

8. **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.

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

10. Adjournment.

Respectfully,

Jennette Espinosa

Executive Director

This is to certify that the above notice was posted on www.littleelm.org, Town of Little Elm website, under Agendas and Minutes prior to 5:00 p.m. this 4th day of August 2022.



Date: 08/08/2022
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 July 11, 2022, Regular Meeting. (Jennette Espinosa, Executive Director)

RECOMMENDED ACTION:

Staff recommends approval of the Minutes as presented.

Attachments

Minutes from July 11 2022

DRAFT



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

**REGULAR MEETING
Monday, JULY 11, 2022
6:00 PM**

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

Absent: Jack Gregg, Secretary; Marce E. Ward, Board Member

Staff Present: Jennette Espinosa, Executive Director
Natasha Roach, Assistant Director
Jeff Moore, Attorney

1. **Roll Call and Call to Order of Regular Meeting:** Meeting was called to order at **6:00 pm** by Ken Eaken, President
Identification of Quorum and call to order.

Absent: Jennifer Eusse, Development Specialist

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

Motion by Vice President Michel Hambrick, seconded by Council Liaison Michael McClellan

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

5 - 0 Passed - Unanimously

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)

Motion by Council Liaison Michael McClellan, seconded by Board Member Jeremy Bolden

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

5 - 0 Passed - Unanimously

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)

Motion by Treasurer Taylor Girardi, seconded by Council Liaison Michael McClellan

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

5 - 0 Passed - Unanimously

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)

Motion by Council Liaison Michael McClellan, seconded by Treasurer Taylor Girardi

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

5 - 0 Passed - Unanimously

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)

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 Jeremy Bolden

5 - 0 Passed - Unanimously

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)

Motion by Board Member Jeremy Bolden, seconded by Treasurer Taylor Girardi

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

5 - 0 Passed - Unanimously

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

No Action Taken

9. **Executive Closed Session of the Board of Directors.** At **6:41 pm** The Little Elm EDC held 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:** At **7:12 pm** The Little Elm EDC reconvened into Regular Session and took action related to Executive Session.

Motion by Vice President Michel Hambrick, seconded by Council Liaison Michael McClellan

(A) Section 551.072:

1. Project located in the general area of Eldorado Parkway and East Park Drive

Motion to authorize the President or Executive Director to execute a resolution approving a real estate sales contract and any and all document necessary to acquire the property in the general area of Eldorado Parkway and East Park Drive on the terms as discussed in Executive Session

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

5 - 0 Passed - Unanimously

(B) Section 551.087:

1. Project located in the general area of Eldorado Parkway and Hardwicke Lane

No Action Taken

Motion by Board Member Jeremy Bolden, seconded by Council Liaison Michael McClellan

(B) Section 551.087:

2. Project located in the general area of Eldorado Parkway and Main Street

Motion to authorize Executive Director to negotiate an amendment with 575 Pizzeria on the terms as discussed in executive session

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

5 - 0 Passed - Unanimously

11. Adjournment.

Respectfully,

Jennette Espinosa, Executive Director

Passed and approved this _____ day of _____ 2022



Date: 08/08/2022
Agenda Item #: 3.
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 Economic Development Corporation's Budget for FY 2022-2023.
(Jennette Espinosa, Executive Director/ Jason Barth, EDC Accountant)

DESCRIPTION:

Review of the proposed Budget for Little Elm EDC for FY 2022-2023.

BUDGET IMPACT:

There is no budget impact for this item.

RECOMMENDED ACTION:

Staff recommends approval of the proposed budget as presented.

Attachments

EDC Proposed Budget FY 2022-2023



Economic Development Corporation

4A Sales Tax

Proposed Budget

FY 2022-2023

The Little Elm Economic Development Corporation is tasked with bringing much needed commercial, industrial and tourist opportunities to the Town of Little Elm. The mission of the EDC is to advance the economic development in Little Elm while maintaining traditional values and a sense of community. The Little Elm EDC was founded in 1993 and has served the Town since that time. The EDC is made up of four members from the community and a Town Council Liaison.

LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION

PROPOSED

BUDGET FY 2022-2023

	FY 2021	FY 2022		FY 2023
	ACTUAL	BUDGET	ESTIMATED	PROPOSED
FUND REVENUES				
5132 SALES TAX	\$2,799,627	\$2,698,734	\$3,120,016	\$3,096,966
5611 INTEREST EARNINGS	53,904	35,000	39,000	15,000
5600 OTHER EARNINGS	3,778,933	432,756	532,446	1,060,144
8900 LOAN PROCEEDS	7,504,340	0	0	0
TOTAL FUND REVENUES	\$14,136,804	\$3,166,490	\$3,691,462	\$4,172,110
FUND EXPENDITURES				
6000 DEBT PAYMENTS	\$1,113,961	\$1,209,291	\$1,209,291	\$1,292,555
6100 PERSONNEL COSTS	361,252	435,799	422,711	424,522
6200 OPERATING EXPENSES	444,375	242,510	167,000	416,454
6343 ADVERTISING	152,480	287,173	200,000	333,797
6729 LAND ACQUISITION	0	2,500,000	2,500,000	0
6730 INCENTIVES	5,257	1,151,436	1,151,436	569,782
6740 TIN MAN SHELL BUILDING	1,914,586	5,743,789	5,743,789	0
6250 TRANSFER TO TOWN	30,000	30,000	30,000	30,000
6252 TRANSFER TO TIRZ #1	103,670	105,000	105,000	105,000
TOTAL FUND EXPENDITURES	\$4,125,581	\$11,704,998	\$11,529,227	\$3,172,110
DIFFERENCE	\$10,011,223	(\$8,538,508)	(\$7,837,765)	\$1,000,000
BEGINNING FUND BALANCE	\$2,445,599	\$13,349,506	\$13,349,506	\$5,511,741
ENDING FUND BALANCE	\$13,349,506	\$4,810,998	\$5,511,741	\$6,511,741



Date: 08/08/2022
Agenda Item #: 4.
Department: Economic Development Corporation
Strategic Goal: Ensure strong relationship within the community and region
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve the Second Amended and Restated Performance Agreement between 575° Pizzeria-Little Elm, LLC and Little Elm Economic Development Corporation. (Jennette Espinosa, Executive Director)

DESCRIPTION:

Materials and construction delays have once again affected the timeline of dates provided in the First Amendment to the Performance Agreement. This agreement has been revised to provide new benchmark dates for the following terms:

- **Qualified Expenditures:** All documentation for qualified expenditures in the minimum amount of One Million and No/100 Dollars (\$1,000,000.00) is now due by **November 1, 2022.**
- **Certificate of Occupancy:** The Developer covenants and agrees to obtain a Certificate of Occupancy by **October 1, 2022.**
- **Operate 575° Pizzeria Restaurant:** The Developer covenants and agrees to be open to the general public by **October 1, 2022.**
- **Job Creation and Retention:** Developer covenants and agrees by **October 1, 2022**, and during the term of this agreement, to employ and maintain a minimum of forty (40) Full-Time Equivalent employees. Developer agrees to beginning on **November 1, 2023** to deliver to the EDC an annual compliance verification disclosing and certifying the number of Full-Time Equivalent employees

In addition, the Little Elm EDC has agreed to increase the amount if their Financial Assistance towards the reimbursement of Qualified Expenditures.

- **Financial Assistance:** The Little Elm EDC originally agreed to contribute **Four Hundred Thousand and No/100 Dollars (\$400,000.00)** toward the reimbursement of Qualified Expenditures. This agreement states that Little Elm EDC has now agreed to contribute an additional **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)** toward Qualified Expenditures made by the Developer within thirty (30) days of receipt of invoices, receipts, or other documentation in the minimum amount of **Five Hundred Fifty Thousand Dollars and No/100 Dollars. (\$550,000.00)** by **November 1, 2022.**

BUDGET IMPACT:

At the EDC Board Meeting held on July 11, 2022, the Board voted to approve a Budget Amendment for Incentives in the amount of \$216,010.00 to the FY 2021-2022 Budget. A portion of this amended amount was designated for the additional **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)** of Qualified Expenditures for 575^o Pizzeria.

RECOMMENDED ACTION:

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

Attachments

Second Amended and Restated Performance - 575 Pizzeria

SECOND AMENDED AND RESTATED PERFORMANCE AGREEMENT

This **SECOND AMENDED AND RESTATED PERFORMANCE AGREEMENT** by and between **575° PIZZERIA - LITTLE ELM, LLC**, a Texas limited liability company (hereinafter referred to as “Developer”), 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, LEEDC is an economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended (also referred to as the “Act”), 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, in pertinent part, 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, Section 501.158 of the Texas Local Government Code prohibits the provision of a direct incentive unless LEEDC enters into an Agreement with Developer providing at a minimum a schedule of additional payroll or jobs to be created or retained by LEEDC’s investment; a schedule of capital investments to be made as consideration for any direct incentives provided by LEEDC to Developer; and a provision specifying the terms and conditions upon which repayment must be made should Developer fail to meet the agreed to performance requirements specified in this Agreement; and

WHEREAS, Developer has applied to LEEDC for financial assistance necessary for the construction of Qualified Expenditures to be made to the property generally located at 211 E. Eldorado Parkway, Suite 100, Town of Little Elm, Texas (hereinafter referred to as the “Property”); and

WHEREAS, the LEEDC’s Board of Directors have determined the financial assistance provided to Developer for the Qualified Expenditures to be made to the Property 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; and

WHEREAS, Developer agrees and understands that Section 501.073(a) of the Texas Local Government Code requires the Town Council of the Town of Little Elm, Texas, to approve all programs and expenditures of the LEEDC, and accordingly this Agreement is not effective until Town Council has approved this project at a Town Council meeting called and held for that purpose.

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 LEEDC and Developer 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 **December 31, 2026**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

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

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Second Amended and Restated Performance Agreement, together with all exhibits and schedules attached to this Second Amended and Restated Performance Agreement from time to time, if any.
- (c) **Developer.** The word “Developer” means 575° Pizzeria - Little Elm, LLC, a Texas limited liability company, its successors and assigns, whose address for the purposes of this Agreement is 3350 Olsen, Suite 1400, Amarillo, Texas 79109.
- (d) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the LEEDC and Developer.
- (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) **Full-Time Equivalent Employment Position.** The words “Full-Time Employment Position” or “Full-Time Equivalent Employment Position” means and includes a job requiring a minimum of One Thousand Five Hundred and Sixty (1,560) hours of work averaged over a twelve (12) month period.
- (g) **LEEDC.** The term “LEEDC” means the Little Elm Economic Development Corporation, 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 211 E. Eldorado Parkway, Suite 100, Little Elm, Texas 75068.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of the construction and installation of improvements, consisting of a minimum 4,800 square foot 575° Pizzeria Restaurant located on the Property, and those expenses which otherwise meet the definition of “project” as that term is defined by Section 501.103 of the Act, and the definition of “cost” as that term is defined by Section 501.152 of the Act.
- (j) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

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

- (a) **Qualified Expenditures.** Developer covenants and agrees to submit to the LEEDC upon request invoices, receipts, or other documentation of the Qualified Expenditures made to the Property in a form acceptable to the LEEDC prior to any reimbursement. Developer covenants and agrees to provide to the LEEDC upon request said invoices, receipts, or other documentation in the minimum amount of **One Million and No/100 Dollars (\$1,000,000.00) by November 1, 2022.**
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained by **October 1, 2022**, a Certificate of Occupancy from the Town of Little Elm, Texas, for a minimum of 4,800 square feet of 575° Pizzeria Restaurant space located on the Property.
- (c) **Operate 575° Pizzeria Restaurant.** Developer covenants and agrees by **October 1, 2022**, and during the Term of this Agreement to keep open to the general public the 575° Pizzeria Restaurant located on the Property.
- (d) **Job Creation and Retention.** Developer covenants and agrees by **October 1, 2022**, and during the Term of this Agreement to employ and maintain a minimum of **forty (40)** Full-Time Equivalent Employment Positions working at the Property. Developer covenants and agrees beginning on **November 1, 2023** (for the initial reporting period of **October 1, 2022** to September 30, 2023), and during the Term of this Agreement, Developer shall deliver to LEEDC an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the “Annual Compliance Verification”). The Developer covenants and agrees beginning on **November, 2023**, and annually thereafter during the Term of this Agreement,

there will be a total of **four (4)** Annual Compliance Verifications due and submitted to LEEDC covering the Full-Time Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

- (e) **Chamber of Commerce.** Developer agrees to obtain a Yacht Level membership or higher prior to opening for business (obtained CO) and agrees to maintain said membership for the Term of this Agreement.
- (f) **Performance Conditions.** Developer agrees to make, execute and deliver to LEEDC such other promissory notes, instruments, documents and other agreements as LEEDC or its attorneys may reasonably request to evidence this Agreement.
- (g) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Developer and LEEDC.

SECTION 5. AFFIRMATIVE COVENANTS OF LEEDC.

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

- (a) **Financial Assistance.** LEEDC covenants and agrees to submit reimbursement for Qualified Expenditures made by the Developer in the amount of **Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00)** within thirty (30) days of receipt of invoices, receipts, or other documentation in the minimum amount of **One Million and No/100 Dollars (\$1,000,000.00)** by **November 1, 2022**, consistent with Section 4(a) of this Agreement, and receives a certificate of occupancy and is open for business consistent with Sections 4(b) and 4(c) of this Agreement.
- (b) **Performance.** LEEDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between LEEDC and the Developer.

SECTION 6. CESSATION OF ADVANCES.

If LEEDC has made any commitment to provide financial assistance to Developer, whether under this Agreement or under any other agreement, LEEDC shall have no obligation to advance or disburse financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or LEEDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or LEEDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and LEEDC is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to LEEDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **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 is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the Town of Little Elm, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from LEEDC and/or Denton County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by LEEDC to Developer pursuant to Section 5(a) of this Agreement shall become immediately due and payable by Developer to LEEDC.

SECTION 9. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless LEEDC, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of LEEDC's financial assistance by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which LEEDC is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges

the legal authority of LEEDC or Developer to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnatee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to LEEDC with respect to any of the foregoing arising out of the gross negligence or willful misconduct of LEEDC or the breach by LEEDC of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnatee, such Indemnatee shall promptly notify Developer, but the failure to so promptly notify Developer shall not affect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnatee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnatee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

SECTION 10. 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.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Developer warrants and represents that the individual or individuals executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. LEEDC warrants and represents 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) **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 LEEDC: Little Elm Economic Development Corporation
100 W. Eldorado Parkway
Little Elm, Texas 75068
Attn: Jennette Espinosa, Executive Director
Telephone: (214) 975-0455

if to Developer: 575° Pizzeria - Little Elm, LLC
3350 Olsen, Suite 1400
Amarillo, Texas 79109
Attn: Brian Kelleher
Telephone: (806) 322-5575

- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (i) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (j) **Undocumented Workers.** Developer certifies that the 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 the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date the LEEDC notifies Developer of the violation.

[The Remainder of this Page Intentionally Left Blank]

DEVELOPER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SECOND AMENDED AND RESTATED PERFORMANCE AGREEMENT, AND DEVELOPER AGREES TO ITS TERMS. THIS SECOND AMENDED AND RESTATED PERFORMANCE AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

LEEDC:

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

By: _____

Ken Eaken, President

Date Signed: _____

STATE OF TEXAS

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§

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 Texas corporation.

Notary Public, State of Texas

CONSENT:

TOWN OF LITTLE ELM, TEXAS

Curtis J. Cornelious, Mayor

Date: _____

DEVELOPER:

575° PIZZERIA - LITTLE ELM, LLC,
a Texas limited liability company,

By: _____
Brian Kelleher, Member

Date Signed: _____

STATE OF TEXAS

§

§

COUNTY OF DENTON

§

This instrument was acknowledged before me on the ____ day of _____, 2022,
by Brian Kelleher, Member of 575° Pizzeria – Little Elm, LLC, a Texas limited liability company,
on behalf of said Texas company.

Notary Public, State of Texas



Date: 08/08/2022
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 the Termination of Reimbursement Agreement and Performance Agreement between the Tax Increment Reinvestment Zone Number Three and the Little Elm Economic Development Corporation. (Jennette Espinosa, Executive Director)

DESCRIPTION:

On or about April 20, 2021, TIRZ #3 and the Little Elm EDC entered into the original Reimbursement Agreement and Performance Agreement concerning the payment of a reserved amount of **Two Hundred thousand and No/100 Dollars (\$200,00.00)** by TIRZ #3 to Government Capital in the event the Little Elm EDC was unable to make the required payment against their loan.

TIRZ #3 and Little Elm EDC now desire to **terminate and release the parties** of the obligations contained in the Original Agreement by approving this Termination Agreement.

BUDGET IMPACT:

The backup amount of **Two Hundred thousand and No/100 Dollars (\$200,00.00)** can be released from the TIRZ #3 budget.

RECOMMENDED ACTION:

Staff recommends approval of the Termination Agreement as presented.

Attachments

Termination Agreement - TIRZ#3 and EDC

TERMINATION OF REIMBURSEMENT AGREEMENT AND PERFORMANCE AGREEMENT

This Termination of Reimbursement Agreement and Performance Agreement (hereinafter referred to as the “Termination Agreement”) is entered into on the ____ day of _____, 2022, by and between the **TAX INCREMENT REINVESTMENT ZONE, NUMBER THREE, TOWN OF LITTLE ELM, TEXAS**, a tax increment reinvestment zone created by the Town of Little Elm, Texas, pursuant to Chapter 311 of the Texas Tax Code, as amended (hereinafter referred to as “TIRZ # 3”), and the **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “EDC”).

RECITALS:

WHEREAS, on or about April 20, 2021, TIRZ # 3 and EDC entered into the original Reimbursement Agreement and Performance Agreement (the “Original Agreement”) concerning the payment of a reserve amount of **Two Hundred Thousand and No/100 Dollars (\$200,000.00)** (the “Reserve Amount”) by TIRZ # 3 to Government Capital in the event the EDC was unable to make the required payment; and

WHEREAS, Government Capital agrees to release TIRZ # 3 from the obligation to pay the Reserve Amount; and

WHEREAS, TIRZ # 3 and the EDC now desire to terminate and release the parties of the obligations contained in the Original Agreement by approving this Termination Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TIRZ # 3 and EDC covenant and agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERMINATION OF ORIGINAL AGREEMENT AND ANY AMENDMENTS.

- (a) The Original Agreement and any amendments related thereto by and between TIRZ # 3 and the EDC is hereby terminated.
- (b) TIRZ # 3 and the EDC covenant and agree that each party shall have no further obligation to the other party under the Original Agreement and any amendments related thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Termination of Reimbursement Agreement and Performance Agreement on the day and year first above-written.

TIRZ # 3:

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

a tax increment reinvestment zone created by the
Town of Little Elm, Texas, pursuant to Chapter
311 of the Texas Tax Code,

By: _____

Curtis J. Cornelious, President

Date Signed: _____

STATE OF TEXAS

§

§

COUNTY OF DENTON

§

This instrument was acknowledged before me on the ____ day of _____, 2022, by Curtis J. Cornelious, President of the Tax Increment Reinvestment Zone, Number Three, Town of Little Elm, Texas, a tax increment reinvestment zone created by the Town of Little Elm, Texas, pursuant to Chapter 311 of the Texas Tax Code, on behalf of said Texas tax increment reinvestment zone.

Notary Public, State of Texas

EDC:

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

By: _____

Ken Eaken, President

Date Signed: _____

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 Texas corporation.

Notary Public, State of Texas

APPROVED BY TOWN:

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



Date: 08/08/2022
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 First Amendment to Loan Agreement and Series 2021 Note between Little Elm Economic Development Corporation and Southside Bank, a Texas state banking corporation, as assignee of Government Capital Corporation. (Jennette Espinosa, Executive Director)

DESCRIPTION:

In April 2021, the Little Elm EDC and Government Capital entered in to a Loan Agreement and Series 2021 Note. At that time, through a Reimbursement Agreement between Little Elm EDC and Tax Increment Reinvestment Zone Number Three, TIRZ #3 committed to pledge funds on an annual basis, which was intended as a backup source in the event of a shortfall on the EDC loan in the amount of Seven Million Five Hundred Ninety Three Thousand, Seven Hundred Fifty and No/100 Dollars (\$7,593,750.00).

TIRZ #3 annually reserved **Two Hundred Thousand and No/100 Dollars (\$200,000.00)** as a Pledge and Source of Payment for the EDC Loan Agreement and 2021 Note.

This amendment removes the requirement of the Pledge and Source of Payment. The back up source of funds in the TIRZ #3 budget for the amount of **Two Hundred Thousand and No/100 Dollars (\$200,000.00)** is no longer a required obligation of the Loan Agreement and Series 2021 Note.

BUDGET IMPACT:

The earmarked amount of funds in the TIRZ #3 budget for **Two Hundred Thousand and No/100 Dollars (\$200,000.00)** can be released.

RECOMMENDED ACTION:

Staff recommends approval of the First Amendment to the Loan Agreement and Series 2021 Note as presented.

Attachments

EDC First Amendment to Loan Series 2021 Note

FIRST AMENDMENT TO LOAN AGREEMENT AND SERIES 2021 NOTE

THIS FIRST AMENDMENT TO LOAN AGREEMENT AND SERIES 2021 NOTE (the "First Amendment"), dated as of **August 8, 2022**, is between LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION, a political sub-division or agency organized and existing under the laws of the State of Texas ("EDC") and Southside Bank, a Texas state banking corporation ("Bank"), as assignee of GOVERNMENT CAPITAL CORPORATION ("GCC").

RECITALS:

- A. EDC and GCC entered into that certain Loan Agreement and Series 2021 Note dated as of April 15, 2021, along with other exhibits and attachments ("Loan Documents").
- B. GCC assigned its rights under the Loan Documents to the Bank.
- C. EDC and Bank now desire to amend the Loan Documents as herein set forth.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Definitions

1.1 Definitions. Capitalized terms used in this First Amendment, to the extent not otherwise defined herein, shall have the same meanings as in the Loan Documents, as amended hereby.

ARTICLE II

Amendments to Loan Documents - effective as of **August 8, 2022**

2.1 Amendment to the Loan Agreement.

Section 1.1 Definitions.

The definition of "Loan Documents" is hereby replaced with "Collectively, this Agreement, the Series 2021 Note, the Sales Tax Remittance Agreement, and the Resolution".

The "TIRZ Agreement" definition is now hereby removed.

Section 4.3 Pledge and Source of Payment. The following sentence is hereby removed – "The Corporation's obligations under the Series 2021 Note are further secured by the pledge of Tax Increment Funds as set forth in the TIRZ Agreement."

2.2 Amendment to the Index and the rest of the Loan Documents. Any reference to the TIRZ Agreement not referenced herein are hereby removed.

ARTICLE III

Ratifications, Representations and Warranties

3.1 Ratifications. The terms and provisions set forth in this First Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Loan Documents and except as expressly modified and superseded by this First Amendment, the terms and provisions of the Loan Documents are ratified and confirmed and shall continue in full force and effect. EDC and Bank agree that the Loan Documents as amended hereby shall continue to be legal, valid, binding and enforceable in accordance with its terms.

3.2 Representations and Warranties. EDC hereby represents and warrants to Bank that (i) the execution, delivery and performance of this First Amendment and any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite corporate action on the part of EDC and will not violate the articles of incorporation or bylaws of EDC, (ii) except as modified or waived by this First Amendment, the representations and warranties contained in the Loan Documents and any other Loan Document are true and correct on and as of the date hereof as though made on and as of the date hereof, (iii) except as modified or waived by this First Amendment, no Event of Default has occurred and is continuing and no event or condition has occurred that with the giving of notice or lapse of time or both would be an Event of Default, and (iv) EDC is in full compliance with all covenants and Loan Documents contained in the Loan Documents, as modified or waived by the terms of this First Amendment.

3.3 No Material Modification. Solely for purposes of Section 103 of the Internal Revenue Code, the Bank represents that the change to the interest rate and payment amounts under the Loan Documents do not affect the Bank's expectation of repayment by the EDC.

ARTICLE IV

Miscellaneous

4.1 Survival of Representations and Warranties. All representations and warranties made in this First Amendment shall survive the execution and delivery of this First Amendment and no investigation by Bank or any closing shall affect the representations and warranties or the right of Bank to rely upon them.

4.2 Expenses. As provided in the Loan Documents, EDC agrees to pay on demand all costs and expenses incurred by Bank in connection with the preparation, negotiation, and execution of this First Amendment, including without limitation the costs and fees of legal counsel.

4.3 Severability. Any provision of this First Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this First Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

4.4 Applicable Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

4.5 Successors and Assigns. This First Amendment is binding upon and shall inure to the benefit of EDC and Bank and their respective successors and assigns.

4.6 Counterparts. This First Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

4.7 Headings. The headings, captions, and arrangements used in this First Amendment are for convenience only and shall not affect the interpretation of this First Amendment.

4.8 THIS FIRST AMENDMENT AND ALL OTHER INSTRUMENTS, DOCUMENTS AND LOAN DOCUMENTS EXECUTED AND DELIVERED IN CONNECTION WITH THIS FIRST AMENDMENT EMBODY THE FINAL, ENTIRE LOAN DOCUMENTS AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, LOAN DOCUMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THIS FIRST AMENDMENT, AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL LOAN DOCUMENTS OR DISCUSSIONS OF THE PARTIES HERETO.

THERE ARE NO UNWRITTEN ORAL LOAN DOCUMENTS AMONG THE PARTIES HERETO.

Executed as of the date first written above.

EDC:

LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: President of the Board

Attest:

Name: _____

Title: Secretary of the Board

Bank:

SOUTHSIDE BANK

By: _____

Name: Greg Sims

Title: Executive Vice President