

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

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

This **SECOND 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, as depicted in *Exhibit A* of this Agreement, which is attached hereto, 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 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, 2039**, or until the aggregate payments from TIRZ # 3 to LEEDC equal **Eight Hundred Forty Thousand and No/100 Dollars (\$840,000.00)**, whichever is sooner.

## **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 Second 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, as depicted in *Exhibit A* of this Agreement, which is attached hereto. 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 ***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, as depicted in ***Exhibit A*** of this Agreement, which is attached hereto; 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, as depicted in ***Exhibit A*** of this Agreement, which is attached hereto, but not to exceed the Grant Amount of 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)**. The first payment shall commence in tax year 2025 and conclude in tax year 2038.
- (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: \_\_\_\_\_  
Curtis Cornelious, 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]

