ADDENDUM AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING;
TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL
SERVICES DISTRICT SPECIAL MEETING;
AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING

AUGUST 3, 2015

FLOWER MOUND TOWN HALL, 2121 CROSS TIMBERS ROAD
FLOWER MOUND, TEXAS

6:00 P.M.

Item K. (Regular Items) on the agenda is hereby amended by adding Item 23 as follows:

23. REGULAR ITEMS

Public Hearing

Public Hearing to consider approval of a Chapter 380 Agreement, Sales Contract, Promissory Note, and Deed of Trust, between the Town of Flower Mound and Old Town Development LLC, and authorization for the Mayor to execute same on behalf of the Town.

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in a closed meeting with its attorney and to receive legal advice regarding any item listed on this agenda.

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: July 31 2015, at 4:45 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary
DATE:  August 3, 2015
FROM:  Mark Wood, Director of Economic Development
ITEM:  Public Hearing to consider approval of a Chapter 380 Agreement, Sales Contract, Promissory Note, and Deed of Trust, between the Town of Flower Mound and Old Town Development LLC, and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This item is for approval of four documents with Old Town Development related to the sale and development of a 1.613-acre Town-owned property at 2601 West Windsor Drive. This property is immediately to the east of the Town’s Senior Center and has frontage on FM 2499. The Town purchased approximately 22 acres of property in April 2009 to construct the West Windsor Road extension and park improvements. After the improvements were made, it was determined that two tracts of land were suitable for development, thus the Senior Center was constructed, and one more tract of land remains. Staff believes this site to be ideal for restaurant development, given its FM 2499 frontage, the signalized West Windsor intersection and being in the middle of the medical corridor. As such, the Town solicited for bid proposals for this property to construct a large full-service restaurant. The Town Council authorized the solicitation of bids at the June 15, 2015, Town Council meeting. Notice was placed in the newspaper of record and on the Town’s online bid system that the Town was seeking proposal for the property. The Town received two bid proposals, and staff believes the bid proposal submitted by Old Town Development provides the best overall value to the Town.

The documents being considered provide for: the Town to sale the property to Old Town Development for a price of $140,000; Old Town Development will construct a restaurant consisting of 7,280 square feet of total dining space (5,065 square feet of air conditioned building space and 2,215 of outdoor dining patio) and sign Mi Dia as the sole tenant for the restaurant. The note will be payable in annual installments of $28,000 beginning five years after the issuance of a certificate of occupancy by the Town, subject to sales tax offsets contained within the 380 Agreement. Town development fees are waived in the 380 Agreement.

BOARD REVIEW/CITIZEN FEEDBACK:  N/A

ALTERNATIVES/OPTIONS:  N/A

FISCAL IMPACT: Estimated incentive cost of $220,000

Proposed Expenditure:  N/A
Account Number(s):  N/A

Finance Review by:  Debra Wallace, Assistant Town Manager/CFO

LEGAL REVIEW:  Tim Sralla with Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the documents as to form and legality.

ATTACHMENTS:
1. Chapter 380 Agreement
2. Sales Contract
3. Promissory Note
4. Deed of Trust
5. Cost-Benefit

**RECOMMENDATION:** Move to approve a Chapter 380 Agreement, Sales Contract, Promissory Note, and Deed of Trust, between the Town of Flower Mound and Old Town Development LLC, and authorize the Mayor to execute same on behalf of the Town.
This Economic Development Agreement (hereinafter referred to as the “Agreement”) is entered into by and between the Town of Flower Mound, Texas, a Texas home rule municipality (hereinafter referred to as the “Town”), and Old Town Development, LLC d/b/a Old Town Development, a Texas Limited Liability Company (hereinafter referred to as the “Owner”), pursuant to Chapter 380 of the Texas Local Government Code.

RECITALS

WHEREAS, Owner has, pursuant to a Real Estate Contract of Sale and Agreement Regarding Development of Property, contracted to purchase from the Town property located at 2601 West Windsor Drive, Flower Mound, Texas 75028, together with, all and singular, all improvements thereon and all rights and appurtenances pertaining thereto, which Property is more fully described as:

A 1.613 acre tract located at 2601 West Windsor Drive, Flower Mound, Texas 75028 and being all of that Lot 1R2, Block A of the West Windsor Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat recorded as Document Number 2013-313 of the Plat Records of Denton County, Texas.

WHEREAS, Owner desires to develop, construct and lease the Property for use as a “Mi Dia” Mexican restaurant; and

WHEREAS, the Town and Owner wish to address various development issues related to the construction and operation of the restaurant, and to provide for certain economic development incentives for the Owner, and establish the terms and conditions for those incentives, as more fully described herein; and

WHEREAS, the Town and Owner agree that the development, construction, and operation of the restaurant will result in and promote economic development in the Town, thereby increasing property values; and

WHEREAS, the proposed development of the Property is consistent with the ordinances of the Town; and

WHEREAS, Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and

WHEREAS, the Town wishes to partner with Owner and provide various incentives to Owner to assist in the economic development of the Property; and
WHEREAS, the Town has concluded and hereby finds that this Agreement in its entirety clearly promotes economic development in the Town and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the Town and Owner; and

WHEREAS, Owner has applied to the Town for financial accommodations, including those which are described in this Agreement and those which may be described in any exhibit or schedule attached to this Agreement.

NOW, THEREFORE, THE TOWN AND OWNER AGREE AS FOLLOWS:

SECTION 1. FINDINGS INCORPORATED

All the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

SECTION 2. TERM

This Agreement shall be effective as of the Effective Date and end when the parties have fulfilled all of their respective obligations in accordance with this Agreement, unless terminated early as provided in this Agreement. Upon Owner’s payment in full and/or the full credit or offset of all Note Obligations as a result of Sales and Use Tax Receipts in accordance with all documents governing such Note Obligations, all provisions of this Agreement shall terminate and be of no further force and effect with the exception of Section 5(B), Section 5(C), and Section 5(D), which shall in all events remain in effect until the tenth (10th) anniversary of the Commencement Date of the lease between Owner and Restaurant.

SECTION 3. PROGRAM ESTABLISHED

A Program authorized under Chapter 380 of the Texas Local Government Code is hereby established to bring a “Mi Dia” restaurant to the Town, as defined below. The terms of this Agreement shall implement the Program.

SECTION 4. DEFINITIONS

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

Agreement. The word “Agreement” means this 380 Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

Certificate of Occupancy. The words “Certificate of Occupancy” means the certificate issued by the Town building official reflecting that construction has been completed in conformance with appropriate municipal codes and the Owner is authorized to secure full utility service and to permit commercial occupancy of the building.
Effective Date. The words “Effective Date” mean the latter of the date this Agreement is executed by the Town and the date this Agreement is executed by Owner.

Force Majeure. The words “Force Majeure” mean any cause, condition or event, which is beyond the control of Owner or any person for whom Owner is responsible, that could not reasonably be avoided through ordinary care, including, but not limited to, flood, fire, Acts of God, shortage of labor or materials, acts of terror, riot, war, and civil unrest.

Improvements. The word “Improvements” means the Restaurant and related amenities located on the Property.

Note Obligations. The words “Note Obligations” mean all amounts owed or which may become owed by Owner to the Town under the terms of the Promissory Note, as defined herein, including all extensions, renewals, modifications, increases and replacements of the Promissory Note, whether or not evidenced by a new promissory note or other instrument.

Opening Date. The words “Opening Date” mean the date after which a Certificate of Occupancy has been received by the Owner and the Restaurant is fully open to accommodate restaurant patrons and guests.

Owner. The word “Owner” means, as of the Effective Date, OTD FM, LLC d/b/a Old Town Development, a Texas Limited Liability Company, whose address is: OTD FM, LLC d/b/a Old Town Development, Attn: Chris Gordon, Manager and Chief Financial Officer, 2241 Veranda Avenue, Trophy Club, Denton County, Texas 76262; Telephone: (817) 863-8480; E-mail: Chris@OTDTexas.com

Program. The word “Program” means the program established pursuant to Chapter 380 of the Texas Local Government Code as set forth in Section 3 of this Agreement.

Promissory Note. The words “Promissory Note” mean the Real Estate Lien Note dated the same date as this Agreement, in the original principal amount of One Hundred Forty Thousand Dollars and no cents ($140,000.00), and bearing pre-default interest at the rate of zero percent (0%) per annum, executed by Owner and payable to the order of the Town, and all amendments, restatements, increases, renewals, and extensions of the Promissory Note.

Property. The word “Property” means the Property located at 2601 West Windsor Drive, Flower Mound, Texas 75028, together with, all and singular, improvements thereon and all rights and appurtenances pertaining thereto, which Property is more fully described as a 1.613 acre tract located at 2601 West Windsor Drive, Flower Mound, Texas 75028 and being all of that Lot 1R2, Block A of the West Windsor Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat recorded as Document Number 2013-313 of the Plat Records of Denton County, Texas.
Restaurant. The word “Restaurant” means “Mi Dia” an upscale, full-service Mexican restaurant with wait staff, consisting of approximately 7,280 square feet of total dining space, 5,065 square feet of air conditioned building space, and 2,215 of outdoor dining patio area, together with associated sidewalks, landscaping, lighting, utilities, signage and parking improvements, with a design substantially similar and consistent with the layout shown on Exhibit A, attached hereto, and an appearance substantially similar and consistent with the photographs shown on Exhibits B and C, attached hereto, with a general concept or site plan substantially similar and consistent with the site layout shown on Exhibits B and C.

Sales and Use Tax and Sales and Use Tax Receipts. The words “Sales and Use Tax” or “Sales and Use Taxes” or “Sales and Use Tax Receipts” mean the Town’s municipal sales and use tax, currently at the rate of one percent (1.0%), pursuant to section 321.103(a) of the Texas Tax Code, as amended, generated by the Restaurant on the Property; provided, should the Texas Legislature amend the applicable Tax Code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Sales and Use tax shall mean the actual amount of sales and use tax received by the Town, and in the event of an increase, the Sales and Use Tax shall mean one percent (1.0%). The Sales and Use Tax does not include any portion of any dedicated sales tax collected for any purpose or entity other than the one percent (1.0%) general municipal sales and use tax, and expressly excludes, among other taxes, any sales and use tax collected for the Town Crime Control and Prevention District, the Town Fire Control, Prevention & Emergency Medical Services District, the Town Community Development Corporation, or for street maintenance.

Sales Tax Certificate. The words “Sales Tax Certificate” mean a document provided to the Town by Owner itemizing the payment of sales and use taxes by Owner or the Lessee of Owner in connection with operation of the Restaurant.

State Comptroller. The words “State Comptroller” mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

Town. The word “Town” means the Town of Flower Mound, Texas, a Texas home rule municipality, whose address for the purposes of this Agreement is: Town of Flower Mound, Attn: Town Manager, 2121 Cross Timbers Road, Flower Mound, Texas 75028.

SECTION 5. OWNER’S OBLIGATIONS AND AGREEMENTS

A. Owner’s Obligation to Purchase the Property. Owner must purchase the Property from the Town for a purchase price of One Hundred Forty Thousand Dollars and no cents ($140,000.00) (the “Purchase Price”), pursuant to the Real Estate Contract of Sale and Agreement Regarding Development of Property entered into by the parties contemporaneously with this Agreement.

B. Owner’s Obligation to Construct and Operate the Restaurant. Owner intends to develop, construct, and operate or lease the Property for purposes of
operating the Restaurant on the Property. Owner’s development, construction, and leasing of the Property shall comply in all respects to applicable Town ordinances and regulations and all applicable development approvals, permits and conditions granted, provided for, or required thereunder. Owner agrees that from and after the Opening Date to use its best efforts to continuously use and operate the Property as the Restaurant (subject, however, to any cessations due to causes or events of Force Majeure or due to restaurant remodeling, renovation or casualty/condemnation repairs and replacements), and the Property shall not be used for any purpose other than as the Restaurant open to the public and serving visitors, the adjacent business community, and the citizens of the Town. Notwithstanding anything to the contrary herein, if at any time it becomes commercially impractical to operate the Property as the Restaurant as a result of Force Majeure or otherwise due to circumstances beyond Owner’s control (a “Mi Dia Closure”), Owner may replace the “Mi Dia” tenant with an alternative full-service restaurant tenant which does not have another location within five (5) miles of the Property and which must be approved by the Town (“Approved Replacement”), which Town approval shall not be unreasonably withheld, conditioned, or delayed. In the event of a Mi Dia Closure, Owner shall not be in violation of this Agreement so long as Mi Dia is replaced with an Approved Replacement, and the Approved Replacement tenant shall replace Mi Dia and be the “Restaurant” as defined by this Agreement.

C. **Completion of Construction and Execution of Lease with Restaurant Operator.** Except as prevented by delays caused by Force Majeure, Owner must complete construction of the Restaurant improvements and receive a certificate of occupancy no later than March 31, 2017, and enter into a lease for a period of at least ten (10) years with the Restaurant operator for the lease of the Property on or before such date; and

D. **Operation of Restaurant for the Term.** Owner must ensure that the Restaurant opens for business on or before March 31, 2017, and operate continuously for the term of this Agreement, excepting, however, delays and/or closures due to Force Majeure, and in the event the Restaurant ceases to operate on the Property, to lease the Property to exercise commercially reasonable diligence to lease the Property to an Approved Replacement.

E. **Payment of Promissory Note.** Owner must pay the Promissory Note as provided therein, subject to the Sales Tax Credit provisions below.

F. **Undocumented Workers.** Owner certifies that during the Term of this Agreement, Owner will not knowingly employ and directly hire an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended; provided, however, Owner shall not be in default of this covenant in the event other persons or entities working by, through or under Owner hire an undocumented worker (e.g., one of Owner’s contractors hires an undocumented subcontractor or the Restaurant operator hires an undocumented worker.). If during the Term of this Agreement, Owner or its assignee, as applicable, is convicted of a violation under 8
U.S.C. § 1324a(f), and all appeal periods with respect thereto have expired or all appeals with respect thereto have been fully and finally adjudicated in favor of affirming the conviction, Owner shall repay the amount of the public subsidy provided to the Owner under this Agreement plus interest, at the rate of six percent (6%), not later than one hundred twenty (120) days after the date the Town notifies Owner of the violation in writing.

G. **As-Is Sale and Waiver and Release Of Claims.** OWNER ACKNOWLEDGES THAT OWNER HAS INSPECTED THE PROPERTY AND ACCEPTS IT AS IS, WITH ALL FAULTS, WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS. IN ADDITION, OWNER WAIVES AND RELEASES ANY RIGHTS AND CLAIMS UNDER THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE CHAPTER 37). AFTER CONSULTATION WITH AN ATTORNEY OF OWNER'S OWN SELECTION, OWNER ALSO VOLUNTARILY WAIVES PURCHASER'S RIGHTS AND CLAIMS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT (TEXAS BUSINESS & COMMERCE CODE SECTION 17.41, ET SEQ.). OWNER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION INVOLVE THE INTENTIONAL RELINQUISHMENT OF KNOWN RIGHTS AND THAT THERE IS NO DISPARITY OF BARGAINING POWER BETWEEN OWNER AND THE TOWN. Owner also acknowledges that the Town has made no warranty or representation that the property is suitable for Owner’s intended use. Owner waives and releases any claim that Owner may have against the Town, and the Town’s officers, officials, employees, and representatives, in both their official and individual capacities, including any claims for damages and expenses, including attorney’s fees and court costs, arising out of the warranties and representations disclaimed herein. The provisions of this Section will survive Closing and will be included in the Special Warranty Deed.

**SECTION 6. TOWN’S OBLIGATIONS AND AGREEMENTS**

A. **Impact and Building Permit Fees.** The Town will waive any and all fees imposed by the Town related to the Project, including, but not limited to, impact (water, wastewater, and/or road) fees, building permit fees, permit fees, inspection and drainage inspection fees, infrastructure fees, permits, inspection fees, and tap fees relating to the development of the Property and the construction of the Improvements.

B. **Detention Pond Infrastructure.** The Town will maintain the detention pond infrastructure and related drainage infrastructure in the Long Prairie Road and detention pond easements, and will maintain the pond’s cleanliness so as to be free of garbage, rubbish, and waste and excessive algae throughout the Term.

C. **Maintenance of Drainage Easement.** The Town will maintain the drainage easement located on the Property and shown on the site plan attached as Exhibit D throughout the Term.
D. **Cross Access and Parking.** The Town will provide permanent cross access and parking agreements for the benefit of the Property with the adjacent Senior Center property.

E. **Sales Tax Rebate Credit Granted.** The Town will credit or offset against the Note Obligations all Sales and Use Tax Receipts collected by the Town from sales and revenues from the Restaurant operation, as reported by the Restaurant to the State Comptroller, in the five (5) years commencing on the date of issuance of the first certificate of occupancy for of the Restaurant in an amount equal to the lesser of: (1) the total of the Note Obligations, or (2) the amount collected by the Town from the Sales and Use Tax Receipts collected. If the five (5) year period ends during a reporting period, the amount of the credit for that period will be prorated accordingly.

F. **Sales Tax Credit Procedures.** The following provisions govern calculation and application of the credit or offset provided by this Section:

1. Late fees, interest, and attorney’s fees are not eligible for credit or offset under this Section.

2. After the month in which Restaurant operator makes its final payment of Sales and Use Tax to the State Comptroller for its first full or partial calendar quarter of sales for the Restaurant, and continuing each successive calendar quarter thereafter, Owner agrees to submit to the Town a “Sales Tax Credit Submittal Request.”

3. Owner’s Sales Tax Credit Submittal Request shall state the gross amount of the Sales and Use Tax paid by the Restaurant operator for the applicable quarter and the amount of the credit due for such quarter, and shall include a copy of the Restaurant’s quarterly report to the State Comptroller.

4. Owner’s documentation shall identify the taxable “sales and use tax-eligible” sales from the Restaurant for the preceding quarter.

5. Unless otherwise determined by the Texas Attorney General in writing, the submitted documentation shall be considered confidential financial information contained in a public document (or other reproduction media) not subject to release to the public. The Town shall seek a written opinion from the Texas Attorney General, raising any applicable exception to release, prior to any release to a third-party under the Texas Public Information Act. The Parties agree, however, that this Agreement shall not be considered confidential.

6. If Owner shall fail to submit a Sales Tax Credit Submittal Request for a particular quarter, then the Town may give Owner written notice of Owner’s failure to timely submit such Sales Tax Credit Submittal Request, and Owner shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such Sales Tax Credit Submittal Request.
(7) The Town’s determination of the amount of the Sales Tax Credit due Owner is final; provided, however, that Owner may appeal to the Town Council within thirty (30) days of payment, the Town Council shall hear the appeal within thirty (30) days and the Town Council’s determination of the amount of the Sales Tax Credit shall be final.

SECTION 7. DEFAULT

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

A. Cessation of Operations. At any point during the Term of this Agreement, Owner ceases operations on the Property for more than thirty (30) consecutive days, unless such cessation is due to causes or events of Force Majeure or due to restaurant remodeling, renovation or casualty/condemnation repairs and replacements.

B. Breach of Warranty, Misrepresentation or Omission. Any warranty, representation or statement made or furnished to the Town by or on behalf of Owner under this Agreement or any document(s) related hereto is/are false or misleading in any material respect, either now or at the time made or furnished, and Owner fails to cure same within sixty (60) days after written notice from the Town describing the violation, or if such violation cannot be cured within such 60-day period in the exercise of all due diligence, then if Owner fails to commence such cure within such 60-day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if Owner learns that any such warranty, representation or statement has become false or misleading at the time that it was made, and Owner fails to provide written notice to the Town of the false and misleading nature of such warranty, representation or statement within ten (10) days after Owner learns of its false or misleading nature.

C. Breach of Agreement. Failure of Owner to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents (including applicable Town ordinances), or failure of Owner to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between Owner and the Town, and Owner fails to cure such failure within ninety (90) days after written notice from the Town describing such failure, or if such failure cannot be cured within such 90-day period in the exercise of all due diligence, then if Owner fails to commence such cure within such 90-day period or fails to continuously thereafter diligently prosecute the cure of such failure.

D. Early Termination. If any Event of Default by Owner shall occur, and Owner fails to cure same in accordance herewith, the Town may terminate this Agreement. In such event, Owner shall forfeit all entitlement to future economic development incentives to Owner under this Agreement, and Owner will then be obligated to pay the balance of the Promissory Note to the Town as provided in the Promissory Note.

SECTION 8. MISCELLANEOUS
A. **Right of Access.** Owner further agrees that the Town, its agents and employees, shall have a reasonable right to access to the Property and any improvements thereon to inspect same in order to ensure that the construction of the improvements is in accordance with this Agreement and/or all applicable federal, state and local laws, ordinances and regulations. After completion of the improvements, the Town and its agents and employees shall have the continuing right of inspection to ensure that such are thereafter maintained and operated in accordance with this Agreement and/or all applicable federal, state and local laws.

B. **Inspection of Books.** The Town shall have the right to inspect Owner’s books and related documents, upon five (5) days’ written notice to Owner, to determine Owner’s compliance with the provisions of this Agreement. The failure to allow the inspection of Owner’s books and related documents shall constitute an Event of Default.

C. **Captions and Headings.** The captions and headings of the Sections of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement nor shall they be employed to interpret or aid in the construction of this Agreement.

D. **Covenant Running with the Land.** This Agreement shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Owner and all others holding any interest now or in the future, and it is the intent of this Agreement, and the parties so acknowledge, that any and all phases of the Project shall be subject to this Section of this Agreement.

E. **Application of Texas Laws 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 Denton County, Texas.

F. **Notices.** Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: The Town of Flower Mound, Texas
Attn: Town Manager’s Office
2121 Cross Timbers Road
Flower Mound, Texas 75028

If to Owner: Chris Gordon, Owner and Chief Financial Officer
OTD FM, LLC d/b/a Old Town Development
2241 Veranda Avenue
Trophy Club, Texas 76262
G. **Prevailing Party in Event of Legal Action.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney’s fees (including its reasonable costs and attorney’s fees on any appeal).

H. ** Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

I. **Invalidation.** Invalidation of any one of the provisions of this document by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

J. **Telecopied Facsimile.** A telecopy facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

K. **Mayor Authorized to Execute.** The Town Council hereby authorizes the Mayor of the Town of Flower Mound to execute this Agreement on behalf of the Town.

L. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

M. **Binding Obligation.** The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owner warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Owner to same. Further, this Agreement is and shall be binding upon Owner, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

N. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation.

O. **Assignment.** This Agreement may not be assigned without the express written consent of the other Party.

END OF PAGE – SIGNATURES TO FOLLOW
PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, on this ____ day of ______________, 2015.

TOWN:

TOWN OF FLOWER MOUND, TEXAS

Thomas E. Hayden, Mayor

ATTEST:

Theresa Scott, Town Secretary

STATE OF TEXAS )
) COUNTY OF DENTON )

This instrument was acknowledged before me on the ___ day of ____________, 2015, by Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, a Texas home rule municipality, on behalf of said Town.

Notary Public for the State of Texas
Signed this ______ day of __________________, 2015.

OWNER:

OTD FM, LLC  
D/B/A OLD TOWN DEVELOPMENT

By: ________________________________  
Chris Gordon  
Member and Manager

STATE OF TEXAS  )
COUNTY OF _______ )

This instrument was acknowledged before me on the ____ day of  
__________________, 2015, by Chris Gordon, a Member and Manager of OTD FM, LLC,  
d/b/a Old Town Development, a Texas limited liability company, on behalf of said limited  
liability company.

________________________________  
Notary Public for the State of Texas
REAL ESTATE CONTRACT OF SALE AND AGREEMENT
REGARDING DEVELOPMENT OF PROPERTY

THE STATE OF TEXAS §
COUNTY OF DENTON §

1. AGREEMENT TO SELL AND PURCHASE.

The Town of Flower Mound, Texas a home rule municipal corporation organized under the laws of the State of Texas (hereinafter collectively referred to as “Seller”), hereby agrees to sell and convey to OTD FM, LLC d/b/a Old Town Development (hereinafter referred to as “Purchaser”), fee simple absolute title to that certain real property located at 2601 West Windsor Drive, Flower Mound, Texas 75028, together with, all and singular, all improvements thereon and all rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, alleys or right-of-way (such real estate, improvements, rights and appurtenances being hereinafter referred to as the “Property”), on the terms and conditions provided herein, and Purchaser hereby agrees to purchase and pay for said Property on the terms and conditions provided herein.

2. PROPERTY TO BE CONVEYED.

The Property is described as and together with, all and singular, all improvements thereon and all rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, alleys or right-of-way which Property is more fully described as:

A 1.613 acre tract located at 2601 West Windsor Drive, Flower Mound, Texas 75028 and being all of that Lot 1R2, Block A of the West Windsor Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat recorded as Document Number 2013-313 of the Plat Records of Denton County, Texas.

3. EXCEPTIONS FROM CONVEYANCE.

All presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral reservations and interests and other instruments that affect the Property Conveyed; validly existing easements, rights-of-way and prescriptive rights, whether of record or not; any law, ordinance, or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting, or relating to the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, shortages in area or boundary lines; any encroachments or overlapping of improvements; standby fees, and all accrued and unpaid taxes and assessments.

4. RESERVATIONS FROM CONVEYANCE.

In addition, Seller reserves and retains all oil, gas, and other minerals in or under the Property, any royalty under any existing or future lease covering any part of the Property,
production and drilling rights, lease payments, and all related benefits. However, Seller agrees to waive Seller’s right to use the surface of the Property, but this waiver shall not affect the right of Seller, and Seller’s lessees, successors and assigns to utilize the subsurface of the Property or engage in directional or horizontal drilling activities which are conducted from the surface of real property other than the Property and are at least two hundred feet (200”) below the surface of the Property, so long as such use does not disturb Buyer’s use of the surface of the Property. Seller also reserves a drainage easement across the Property as shown on the site plan attached hereto as Exhibit A.

5. CONSIDERATION.

The consideration for the purchase of the Property is the execution and delivery of a Promissory Note payable by Purchaser to Seller in the principal sum of One Hundred Forty Thousand Dollars and No Cents ($140,000.00) (the “Purchase Price”), payable on the terms and conditions described in the attached Exhibit B, said note to be secured by a Deed of Trust and Assignment of Rents, Leases, Profits, Income, and Contracts to Secure Payment and Performance, a copy of which is attached hereto as Exhibit C, and a vendor’s lien retained in the Special Warranty Deed, a copy of which is attached hereto as Exhibit D.

6. SELLER FINANCING TERMS.

A. Evidence of Creditworthiness. To establish Purchaser's creditworthiness, Purchaser shall deliver to Seller within seven (7) days after the effective date of this contract, a credit report, a balance sheet and income statement (to the extent same are available), and verification of funds on deposit in financial institutions. Purchaser hereby authorizes any credit reporting agency to furnish copies of Purchaser's credit reports to Seller at Purchaser's sole expense.

B. Credit Approval. If the credit documentation described in Paragraph A is not delivered within the specified time, Seller may terminate this contract by notice to Purchaser within seven (7) days after expiration of the time for delivery, and the earnest money will be paid to Seller. If the credit documentation is timely delivered, and Seller determines in Seller's sole discretion that Purchaser's credit is unacceptable, Seller may terminate this contract by notice to Purchaser within seven (7) days after expiration of the time for delivery and the earnest money will be refunded to Purchaser. If Seller does not terminate this contract, Seller will be deemed to have approved Purchaser's creditworthiness.

C. Promissory Note. Purchaser will deliver to Seller at Closing the fully executed Promissory Note.

D. Deed of Trust to Secure Payment of Promissory Note. Purchaser will deliver to Seller at Closing the fully executed Deed of Trust to Secure Payment of Promissory Note. (This requirement is in addition to, and not in lieu of, the requirement for the Deed of Trust to Secure Performance.) The Deed of Trust to Secure Payment of Promissory Note will provide that no escrow account for property taxes and insurance will be required, but Purchaser shall furnish Seller, before each year's ad valorem taxes become delinquent, evidence that all ad
valorem taxes on the Property have been paid, and Purchaser shall annually furnish Seller evidence of paid-up casualty insurance for such amounts as are acceptable to Seller, and through an insurer acceptable to Seller, which policy shall name Seller as a mortgagee loss payee.

E. Vendor’s Lien. Seller will also retain via the Special Warranty Deed a vendor’s lien securing the payment of the Promissory Note and Purchaser’s other obligations provided herein.

7. RE-DEVELOPMENT CONCESSIONS AND AGREEMENTS.

A. Economic Development Agreement. The parties have negotiated and reached agreement regarding certain concessions to facilitate Purchaser’s development of the Property. Those concessions are set forth in an Economic Development Agreement, a copy of which is attached hereto as Exhibit E, which will be executed by the parties at Closing.

B. Deed of Trust to Secure Performance. In addition to the other security instruments Purchaser agrees to provide, Purchaser will deliver to Seller at Closing a fully executed Deed of Trust to Secure Performance in form satisfactory to Seller’s legal counsel. The Deed of Trust to Secure Performance will secure Purchaser’s obligations under the Economic Development Agreement, and provide that in the event of breach by Purchaser, after written notice and a thirty (30) day opportunity to cure (or such longer period of time as is necessary under the circumstances), Seller can declare Purchaser in default under the terms of the Economic Development Agreement and pursue foreclosure under the Deed of Trust to Secure Performance. The Deed of Trust to Secure Performance shall also provide that if, at any time until the latter of (1) a period of one hundred twenty (120) months after the issuance of a certificate of occupancy for the Property or (2) the date Purchaser fulfills all of its obligations under the Economic Development Agreement, all or any part of the Property is sold, conveyed, leased, or otherwise assigned, in whole or in part (including any contract for deed) (but excepting being pledged as security for a construction loan permitted by the Seller, without Seller's prior written consent, which consent may be withheld in Seller's sole discretion, Seller may declare Purchaser in default under the terms of the Economic Development Agreement and pursue foreclosure under the Deed of Trust to Secure Performance. Seller agrees to subordinate Seller’s rights under the Deed of Trust to Secure Performance (but not the Deed of Trust to Secure Payment of Promissory Note) to any liens or deeds of trust created solely to fund the initial construction and development of the Property, but Seller shall not be obligated to subordinate Seller’s rights under the Deed of Trust to any liens or deeds of trust created, in whole or in part for any other reasons or purposes. The creation of a subordinate lien, any conveyance under threat or order of condemnation, or the passage of title by reason of the death of a Purchaser or by operation of law will not entitle Seller to exercise the remedies provided in this paragraph, but in any such event, Purchaser's obligations to perform Purchaser’s obligations under the Economic Development Agreement shall continue unabated, and be binding on Purchaser, or Purchaser’s heirs, successors or assigns, as the case may be.

8. PURCHASER’S REPRESENTATIONS TO SELLER.
Purchaser represents and warrants to Seller that the following are true and correct as of the effective date of this Contract, and will also be true and correct on the Closing Date:

A. Authority. Purchaser is a resident of or legal entity registered in the State of Texas with authority to perform all of Purchaser’s obligations under this Contract. This Contract is, and all documents required by this Contract to be executed and delivered to Seller at closing will be, duly authorized, executed and delivered by Purchaser. At Closing, Purchaser will deliver such proof of corporate authority as Seller or the Title Company may reasonably request.

B. No Litigation. Purchaser represents that there is, at the time Purchaser executes this Contract, no pending or threatened litigation or legal proceeding, including any proceeding under Chapters 7, 11, or 13 of the United States Bankruptcy Code, against Purchaser that might affect Purchaser’s ability to perform its obligations under this Contract.

9. HAZARDOUS MATERIALS.

PURCHASER ACKNOWLEDGES THAT SELLER HAS MADE NO REPRESENTATIONS OR WARRANTIES REGARDING THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON THE PROPERTY OR THE MIGRATION OF HAZARDOUS MATERIALS OR ENVIRONMENTAL CONTAMINATION ON OR UNDER THE PROPERTY, AND PURCHASER ACCEPTS THE PROPERTY AS-IS, AND ASSUMES ALL RESPONSIBILITY AND LIABILITY RELATING TO THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROPERTY, THE MIGRATION OF HAZARDOUS MATERIALS OR ENVIRONMENTAL CONTAMINATION ON OR UNDER THE PROPERTY, THE DUTY AND RESPONSIBILITY TO MITIGATE OR CLEAN UP ANY HAZARDOUS MATERIALS OR ENVIRONMENTAL CONTAMINATION OR DECONTAMINATE THE PROPERTY, AND THE VIOLATION OF ANY LAWS, ORDINANCES OR REGULATIONS REGARDING THE PRESENCE OF SUCH MATERIALS OR CONTAMINATION ON OR UNDER THE PROPERTY. Purchaser has had the opportunity to conduct any studies, assessments, surveys, analyses, and investigations Purchaser deems prudent, and Purchaser assumes all liability and responsibility for removal or mitigation of any hazardous materials or environmental contamination, and Purchaser agrees to indemnify Seller from any liability and responsibility for such removal or mitigation of any hazardous materials or environmental contamination.

10. AS-IS SALE AND WAIVER AND RELEASE OF CLAIMS.

PURCHASER ACKNOWLEDGES THAT PURCHASER HAS INSPECTED THE PROPERTY AND ACCEPTS IT AS IS, WITH ALL FAULTS, WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS. IN ADDITION, PURCHASER WAIVES AND RELEASES ANY RIGHTS AND CLAIMS UNDER THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE CHAPTER 37). AFTER CONSULTATION WITH AN ATTORNEY OF PURCHASER’S OWN SELECTION, PURCHASER ALSO VOLUNTARILY WAIVES PURCHASER’S RIGHTS AND CLAIMS UNDER THE
TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT (TEXAS BUSINESS & COMMERCE CODE SECTION 17.41, ET SEQ.). PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION INVOLVE THE INTENTIONAL RELINQUISHMENT OF KNOWN RIGHTS AND THAT THERE IS NO DISPARITY OF BARGAINING POWER BETWEEN PURCHASER AND SELLER. Purchaser also acknowledges that Seller has made no warranty or representation that the property is suitable for Purchaser’s intended use. Purchaser waives and releases any claim that Purchaser may have against Seller, and Seller’s officers, officials, employees, and representatives, in both their official and individual capacities, including any claims for damages and expenses, including attorneys’ fees and court costs, arising out of the sale of the Property, the administration, evaluation, recommendation or award of the bid, and any requirements of the Bid Specifications. The provisions of this Section will survive Closing and will be included in the Special Warranty Deed.

11. SPECIAL ASSESSMENTS.

If the Property is situated within a utility district or flood control district subject to the provisions of Section 49.52 of the Texas Water Code, then Seller shall give to Purchaser as part of the Title Documents the required written notice. The notice must set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code.

If the Property is subject to mandatory membership in a property owner’s association, Seller shall provide the name, address and telephone number of the property owner’s association and shall notify Purchaser of the current annual budget of the property owners’ association, the current authorized periodic fees, dues and/or assessments, and any contemplated future assessments of which Seller is aware relating to the Property.

12. NO COMMISSIONS OWED.

Purchaser represents to Seller that Purchaser has not retained any real estate agent or broker, and that no party is entitled to receive a commission or other payment upon the sale of the Property, and Purchaser warrants that if any person or entity claims such a right through Purchaser, Purchaser shall, to the extent permitted by law, indemnify Seller from liability, including the payment of reasonable attorney’s fees incurred. This warranty shall survive Closing.

13. CLOSING.

A. Date. The closing of this Contract shall be held on a date mutually agreeable to the parties within thirty (30) days (the “Closing Date”) at the offices of ____________________ (“the Title Company”) at its address stated below; provided, however, that if on such date the Title Company is not ready to close, Seller by written notice to Purchaser may postpone the date of the closing to such date as shall be designated in such notice, provided that such postponed date shall not be more than thirty (30) days after the closing date specified above, absent written agreement by the parties.
B. **Seller’s Obligations.** At the closing, Seller shall deliver to Purchaser at Seller’s expense: (i) a Special Warranty Deed subject to a vendor’s lien, conveying the Property according to the legal descriptions attached hereto, subject to the Exceptions and Reservations stated above; and (ii) possession of the Property.

C. **Purchaser’s Obligations.** At the closing, Purchaser shall deliver to Seller the following: (i) the Promissory Note; (ii) Deed of Trust and Security Agreement to Secure Payment of Promissory Note; (iii) Deed of Trust to Performance; (iv) Financing Statement; and (v) Absolute Assignment of Rents on the Property.

D. **Title Policy.** The Title Company shall issue and present to Purchaser, at Purchaser’s expense, an Owner’s Title Policy issued by the underwriter for the Title Company pursuant to the Title Binder insuring good and indefeasible title to the Property vested in Purchaser in the full amount of the total purchase price of the Property, subject to the standard printed exceptions and the Exceptions and Reservations stated above.

E. **Closing Costs.** Seller shall bear the costs for preparation and filing of the Special Warranty Deed. Purchaser shall bear all other closing costs.

F. **Ad Valorem Property Taxes.** Taxes shall be prorated at closing; because Seller is a tax exempt organization, Seller will not be required to pay any taxes at closing, but parties shall authorize and instruct the Title Company to inform the appropriate taxing authorities of the transaction and Seller’s tax exempt status, and cooperate to avoid Purchaser being required to pay ad valorem taxes for the period of time Seller has owned the property.

G. **Phase 1 Contingency.** Buyer may obtain a Phase 1 Environmental Assessment (“Phase 1”) of the Property prior to the Closing Date. In the event such Phase 1 reveals the existence of any hazardous or toxic substances on the Property, Buyer may elect to terminate this Contract by so notifying Seller in writing, in which event this Contract shall be terminated, the parties are released from all responsibilities to one another as a result of this Contract, and this Contract shall have no further force or effect.

14. **DEFAULT.**

If Seller shall fail to consummate this Contract for any reason, except Purchaser’s default, Purchaser may enforce specific performance of this Contract as Purchaser’s sole remedy. Nothing contained in this Contract shall be construed as a waiver of the Seller’s governmental immunity or any other constitutional or statutory liability protection or limitation on damages.

If Purchaser shall fail to consummate this Contract for any reason except Seller’s default, Seller may enforce specific performance of this Contract as Seller’s sole remedy.

15. **MISCELLANEOUS PROVISIONS.**
A. Effective Date of Contract. The term “Effective Date of this Contract” as used herein shall mean the latter of (1) the day that this Contract has been signed by Purchaser and (2) the day that this Contract has both been approved by the Town Council of Seller and signed by the Mayor or City Manager of Seller.

B. Calculation of Days. If the final date of any period falls upon a Saturday, Sunday or legal holiday under the laws of the State of Texas, or upon a date when the office of the Title Company is closed for other reasons, then in such event the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday under the laws of the State of Texas, and the Title Company’s office is open.

C. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, five (5) days after being deposited in the United States mail, postage fully prepaid, certified mail, addressed to the intended recipient at the addresses shown below, with a copy to such recipient’s legal counsel, if the name of such legal counsel is shown below, or faxed to the facsimile transmission numbers of such persons shown on the signature page of this Contract. Any address for notice may be changed by written notice so given.

Notices to be sent to:

SELLER:

Town of Flower Mound
Attn: Town Manager
Town Hall, 2121 Cross Timbers Road
Flower Mound, Texas 75028

and

Tim G. Sralla
TAYLOR, OLSON, ADKINS, SRALLA & ELAM, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Telephone: (817) 332-2580
Facsimile: (817) 332-4740
tsralla@toase.com

PURCHASER:

OTD FM, LLC d/b/a Old Town Development
c/o Chris Gordon, Owner and Chief Financial Officer
2241 Veranda Avenue, Trophy Club
Denton County, Texas 76262
(817) 863-8480
Chris@OTDTexas.com

and
D. **Forms.** In case of a dispute as to the form of any document required hereunder, the current form prepared by the State Bar of Texas shall be conclusively deemed reasonable.

E. **Attorney’s Fees.** If either party shall be required to employ an attorney to enforce or defend the rights of such party hereunder, the prevailing party shall be entitled to recover reasonable attorney’s fees.

F. **Integration.** This Contract contains the complete agreement between the parties and cannot be varied except by the written agreements of the parties. The parties agree that there are no oral agreements, understanding, representations or warranties which are not expressly set forth herein.

G. **Survival.** The terms and conditions of this Contract and all representations, warranties, covenants and agreements made by Seller shall survive the closing of this transaction, and shall not merge herein.

H. **Binding Effect.** This Contract shall inure to the benefit of and bind the parties hereto and their respective heirs, representatives, successors and assigns and shall be construed under the laws of the State of Texas.

I. **Rules of Construction.** The parties acknowledge and agree that this Contract is the product of negotiation and compromise, and that both parties have consulted legal counsel in the negotiation of the Contract, and that the Contract shall not be construed against the other party, but all other rules of contract construction shall apply.

J. **Choice of Law and Place of Performance and Venue.** This Contract is to be construed under the substantive laws of the State of Texas, without regard to its choice of law rules. This Contract is to be performed entirely in Denton County, Texas, and in the event of any dispute, exclusive venue shall be in the state courts located in Denton County, Texas.

K. **Contract Documents.** Seller’s Bid Specifications attached hereto as Exhibit F, and Purchaser’s Bid Proposal attached hereto as Exhibit G, are incorporated into this Contract as if set forth verbatim, and shall be considered part of this Contract. This Contract, together with any exhibits and addenda, Seller’s Bid Specifications, and Purchaser’s Bid Proposal, constitute the entire agreement of the parties concerning this transaction. There are no oral representations, warranties, agreements or promises pertaining to the sale of the Property by Seller to Purchaser not incorporated in this Contract, the exhibits and addenda.

L. **No Waiver of Default.** A failure of the non-defaulting party to declare immediately a default shall not constitute a waiver of any provision of this Contract, unless this
Contract expressly specifies a specific time for objection and a waiver upon a failure to timely object.

M. **Time is of the Essence.** Time is of the essence in this Contract of Sale.

N. **Maintenance of Drainage Easement.** Seller agrees that Seller will maintain the drainage easement located on the Property and shown on the site plan attached as Exhibit H throughout the Term of the Economic Development Agreement.

END OF PAGE – SIGNATURES TO FOLLOW
Signed on this ______ day of ________________________, 2015.

PURCHASER

OTD FM, LLC
d/b/a OLD TOWN DEVELOPMENT

CHRIS GORDON, Manager and Chief Financial Officer
Signed on this ______ day of ________________________, 2015.

SELLER

TOWN OF FLOWER MOUND, TEXAS

By: ______________________________________

Thomas Hayden, Mayor
REAL ESTATE LIEN NOTE

Date: __________________, 2015

Borrower: OTD FM, LLC d/b/a Old Town Development

Borrower’s Address: Chris Gordon, Owner and Chief Financial Officer
OTD FM, LLC d/b/a Old Town Development
2241 Veranda Avenue, Trophy Club, Denton County, Texas 76262
(817) 863-8480
Chris@OTDTexas.com

Lender: Town of Flower Mound, Texas

Place for Payment: Town of Flower Mound
Town Hall, 2121 Cross Timbers Road
Flower Mound, Denton County, Texas 75028

Principal Amount: One Hundred Forty Thousand Dollars and No Cents ($140,000.00)

Pre-Default Annual Interest Rate: Zero Percent per annum (0.00%)

Maturity Date:

Ten (10) years from the date of the issuance of the first certificate of occupancy issued for a building to be constructed on the property known as 2601 West Windsor Drive, Flower Mound, Texas 75028 (said property being more particularly described as Lot 1R2, Block A of the West Windsor Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat recorded as Document Number 2013-313 of the Plan Records of Denton County, Texas)

Annual Interest Rate on Matured, Unpaid Amounts:

Eighteen Percent per annum (18%) or the highest rate allowed by law, whichever is less.

Terms of Payment (principal and interest):

Payable in annual installments of $28,000.00, beginning five (5) years after the date of the issuance of the first certificate of occupancy issued for a building to be constructed on the property known as 2601 West Windsor Drive, Flower Mound, Texas 75028 (said property being more particularly described as Lot 1R2, Block A of the West Windsor Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat recorded as Document Number 2013-313 of the Plan Records of Denton County, Texas), and continuing each year thereafter, with the remaining balance due and payable on the Maturity Date.

Security for Payment:

A vendor’s lien, deed of trust, security agreement, financing statement, and absolute assignment of rents and leases on the property described in the attached Exhibit A.

Promise to Pay:

Borrower promises to pay to the order of Lender the Principal Amount plus interest. This note is payable at the Place for Payment, or other place designated by Lender in writing in Denton County, Texas, and according to the Terms of Payment. After maturity, Borrower promises to pay any unpaid principal balance plus interest at the Post-Default Interest Rate.
Prepayments:

Borrower may prepay this note in any amount at any time before the Maturity Date without penalty or premium. Prepayments will be applied to installments on the last maturing principal, and interest on that prepaid principal will immediately cease to accrue.

Late Payments:

Lender may charge a late fee of five percent (5%) of any installment on any such installment not paid within ten (10) days of the due date.

Default:

If Borrower fails to make any payment due under this note when due or defaults in the performance of any obligation in any instrument securing or collateral to this note, Lender may declare the unpaid principal balance, earned interest, and any other amounts owed on the note immediately due. Borrower waives all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law. Borrower promises to pay reasonable attorney’s fees and court and other costs if this note is placed in the hands of an attorney to collect or enforce the note. The amount due and all expenses will bear interest from the date of advance at the Post-Default Annual Interest Rate. Borrower promises to pay Lender these expenses and interest on demand at the Place for Payment. These expenses and interest will become part of the debt evidenced by this note and will be secured by any security for payment.

Excess Interest:

Interest on the debt evidenced by this note will not exceed the maximum rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this note and all other instruments concerning the debt.

Executed this _____ day of _______________, 2015.

OTD FM, LLC d/b/a Old Town Development, Borrower

By: _________________________________________________

Chris Gordon, Manager and Chief Financial Officer

PREPARED IN THE LAW OFFICE OF:

Tim G. Sralla
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Telephone: (817) 332-2580
Fax: (817) 332-4740
E-mail: tsralla@toase.com
That OTD FM, LLC d/b/a Old Town Development, a Texas Limited Liability Company, (hereinafter referred to as “Grantor”), a Texas Limited Liability Company, by and through Chris Gordon, its Owner and Manager, for the purpose of securing the obligations and liabilities hereinafter described, and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the further consideration of the uses, purposes and trusts hereinafter set forth, has granted, assigned, sold and conveyed and by these presents does grant, sell and convey to Tim G. Sralla, of Tarrant County, Texas, as trustee, and such trustee’s substitutes or successors (the above-named trustee and such trustee’s substitutes or successors hereinafter referred to as “Trustee”), in trust, all of the Mortgaged Property, as defined herein. The Town of Flower Mound, Texas, a Texas home rule municipality, hereinafter referred to as “Beneficiary,” is this day conveying the Property to Grantor, is lending money to fund the purchase by Grantor of the Mortgaged Property, and making certain economic development concessions, and other agreements, which loan and other agreements constitute the consideration for Grantor’s execution of this conveyance for the benefit of Beneficiary.

I. DEFINITIONS.

“Economic Development Agreement” means the Economic Development Agreement to be executed contemporaneously with this Deed of Trust between Grantor and Beneficiary pursuant to Chapter 380 of the Texas Local Government Code, a copy of which is on file with the Town Secretary of Beneficiary.

“Applicable Environmental Laws” means Applicable Laws, as defined herein, pertaining to health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (collectively, together with any subsequent amendments hereinafter referred to as “CERCLA”), the Resource Conservation and Recovery Act of 1976, the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, the Hazardous and Solid Waste Amendments of 1984 (collectively, together with any subsequent amendments hereinafter called “RCRA”), the Texas Water Code and the Texas Solid Waste Disposal Act, all as amended.

“Applicable Laws” means any statute, law, ordinance, regulation, case decision, judicial, quasi-judicial, or administrative order, or other authority which regulates the use of real or personal property, or which imposes duties on the owner, operator, or user of real or personal property, or which imposes civil or criminal liability on the owner, operator, or user of real property, for use of personal or real property or activities occurring upon real property, and which is legally applicable to the Real Property, as defined herein, or the Personal Property, as defined herein.

“Beneficiary” means the person, whether one or more, designated as such in this Deed of Trust as such, and the heirs,
successors and assigns of such person, and is the same person as “Lender,” as defined herein.

“Borrower” means OTD FM, LLC d/b/a Old Town Development, a Texas Limited Liability Company, and any other person or entity, whether more than one, designated as a borrower in the Note, as defined herein, and is the same person as “Grantor” as defined herein.

“Contract Obligations” means Grantor’s obligations under the Economic Development Agreement, as defined herein.

“Deed of Trust” means this Deed of Trust and Assignment of Rents, Leases, Profits, Income, and Contracts to Secure Payment and Performance.

“Grantor” means OTD FM, LLC d/b/a Old Town Development, a Texas Limited Liability Company, and that entity’s successors and assigns, and any other person or entity named as such above, and is the same person or entity as “Borrower” as defined herein.

“Improvements” means all buildings, structures, and other improvements now or later located on or permanently affixed to the Real Property, as defined herein;

“Leases” means all existing and future leases which pertain to all or any part of the Real Property, as defined herein, or all or any part of the Improvements, as defined herein.

“Lender” means the person, whether one or more, designated as lender in the Note, as defined herein, and is the same person or entity as “Beneficiary,” as defined herein.

“Mortgage” means this, collectively, the Deed of Trust, Security Agreement, and Absolute Assignment of Rents, Leases, Profits, Income, and Contracts created by this Deed of Trust, and all amendments, renewals, extensions and replacements to such, and any Financing Statement created pursuant to this Deed of Trust.

“Mortgaged Property” means:

1. All the Real Property, as defined herein;
2. All the Improvements, as defined herein;
3. All equipment and all materials and other goods of every type now or later situated upon the Real Property and (a) intended to be incorporated into the Improvements or (b) that are or become fixtures related to the Real Property or the Improvements;
4. All plans and specifications for the Improvements, all of Grantor’s rights under any Leases, all of Grantor’s rights under any contracts (including contracts of sale) relating to any or all of the Real Property or the Improvements, all tenant deposits under any Leases, all construction contracts and bonds, all maintenance contracts, and all licenses, permits, certificates, documents, and general intangibles (including trade names and symbols used in connection with the Real Property or the Improvements) applicable to the Real Property or the Improvements;
5. All rights, estates, powers, privileges and interests of whatever kind or character appurtenant or incident to any of the foregoing.

“Note” means the Real Estate Lien Note dated the same date as this Deed of Trust, in the original principal amount of ONE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS ($140,000.00), and bearing pre-default interest at the rate of zero percent (0%) per annum, executed by Borrower and payable to the order of Lender, and all amendments, restatements, increases, renewals, and extensions of such promissory note.

“Note Obligations” means all amounts owed or which may become owed by Borrower to Lender under the terms of the Note, as defined herein, including all extensions, renewals, modifications, increases and replacements of the Note, whether or not evidenced by a new promissory note or other instrument.
“Obligations” means, collectively, the Note Obligations, as defined herein, and the Contract Obligations, as defined herein.

“Permitted Encumbrances” means (a) the liens against the Mortgaged Property in favor of Beneficiary which are expressly permitted by the terms of this Deed of Trust, and (b) the liens and/or encumbrances set forth in Exhibit A attached hereto and made a part hereof, if any.

“Person” means any natural person, firm, corporation, association, partnership, joint venture, trust, or other legal entity, as applicable.

“Personal Property” means all property described in Subsections (3), (4) and (5) of the definition of Mortgaged Property, to the extent it is personal property under Applicable Laws, and all proceeds and permutations thereof.

“Real Property” is defined as that certain real property described as:

2601 West Windsor Drive, Flower Mound, Texas 75028, together with, all and singular, all improvements thereon and all rights and appurtenances pertaining thereto, which Property is more fully described as a 1.613 acre tract located at 2601 West Windsor Drive, Flower Mound, Texas 75028 and being all of that Lot 1R2, Block A of the West Windsor Addition, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat recorded as Document Number 2013-313 of the Plat Records of Denton County, Texas;

together with, all and singular, the following: (a) Grantor’s interest in any and all leases and contracts affecting all or any part of the Property; (b) any rights of ingress and egress, (c) privileges, (d) hereditaments, (e) appurtenances, (f) interests in any streets, roads, rights-of-way, easements, (g) strips and gores in any adjacent property not conveyed, (h) easements, (i) all other present or future rights appurtenant to, serving or benefitting the Real Property, (j) licenses relating to the Real Property, and (k) all proceeds in anywise incident or appertaining to or arising from the Real Property.

“Rents” means all rent and other income from the Mortgaged Property, as defined herein, including all rent and other income under all existing or future Leases.

“Title Policy” means a Mortgagee Policy of Title Insurance or Commitment, if and as required by Beneficiary, issued by a Title Company for the benefit of Beneficiary and relating to the Real Property, as defined herein and the lien created by this Deed of Trust.

“Trustee” means the person designated as such in this Deed of Trust, and that person’s substitutes or successors, as designed by Beneficiary.

“UCC” means the Texas Business and Commerce Code. All terms defined in the UCC have the same meanings in this Deed of Trust as in the UCC.

II. TRUST CONVEYANCE.

Grantor conveys the Mortgaged Property to Trustee, to have and to hold the Property, together with the rights, privileges and appurtenances thereto belonging, forever. The provisions of this Deed of Trust shall run with the Real Property, and any and all parts of it, and Grantor does hereby bind Grantor, and Grantor’s successors and assigns, to warrant and forever defend title to the Mortgaged Property in favor of the Trustee, his substitutes or successors and assigns forever, against the claim or claims of all persons claiming or to claim the same or any part thereof, in trust for the following purposes: (a) to secure the full and timely payment and performance of all of the Note Obligations; and (b) to secure the full and timely payment and performance of all of Grantor’s obligations and liabilities under the Economic Development Agreement, which is an integral part of the transaction and agreement of the parties regarding the Mortgaged Property, and all of the Contract Obligations. Grantor acknowledges and agrees that all of the Contract Obligations shall survive closing of the sale of the Property to Grantor, and are incorporated herein, regardless of whether they are expressly stated herein.

III. GRANTOR’S WARRANTIES.
So long as the Obligations, or any part thereof, remains unpaid or unsatisfied, Grantor warrants and represents to Beneficiary that the following are true and correct:

A. **Title and Authority.** Grantor is the lawful owner of good and indefeasible title to the Mortgaged Property and Improvements and has good right and authority to grant, bargain, sell, transfer, assign and mortgage the Mortgaged Property and Improvements and to grant a security interest in the Personal Property. The Mortgaged Property is subject to no encumbrances, liens, restrictions, easements, reverters, conditions, mechanic’s or materialmen’s liens, lienable bills or other claims, as of the date hereof, except for the Permitted Encumbrances.

B. **Compliance with Covenants and Laws.** The Mortgaged Property and the intended use thereof by Grantor comply with all applicable restrictive covenants, Applicable Laws. Grantor has obtained all requisite zoning, utility, building, health and operating permits from each governmental authority or municipality having jurisdiction over the Mortgaged Property. All engineering specifications with respect to the Mortgaged Property are within applicable environmental standards.

C. **Environmental.** Without limitation of any of the foregoing, no asbestos, material containing asbestos which is or may become friable or material containing asbestos deemed hazardous by Applicable Environmental Laws has been installed in the Mortgaged Property and the Mortgaged Property and Grantor are not in violation of or subject to any existing, pending or, to the best knowledge of Grantor, threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Environmental Laws, and this representation would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property and Grantor. Grantor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Laws. Grantor undertook, at the time of acquisition of the Mortgaged Property, all appropriate inquiry into the previous ownership and uses of the Mortgaged Property consistent with good commercial or customary practice to determine that the Mortgaged Property and the uses therefor are in compliance with all Applicable Environmental Laws. Grantor has taken all steps necessary to determine and has determined that no hazardous substances or solid wastes have been disposed of or otherwise released on or to the Mortgaged Property. The use which Grantor makes and intends to make of the Mortgaged Property will not result in the disposal or other release of any hazardous substance or solid waste on or to the Mortgaged Property. The terms “hazardous substance” and “release” as used in this Deed of Trust shall have the meanings specified in CERCLA, and the terms “solid waste” and “disposal” (or “disposed”) shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, then such broader meaning shall apply subsequent to the effective date of such amendment and provided further, to the extent that the laws of the State of Texas establish a meaning for the terms “hazardous substance,” “release,” “solid waste,” or “disposal” (or “disposed”) which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply. This Section is subject to Borrower supplying to Beneficiary environmental impairment liability insurance and the Disclosure Statement of even date with this Deed of Trust.

D. **Condition of Property.** The Mortgaged Property is, or will be at Closing, in good condition and repair with no deferred maintenance and free from damage caused by fire or other casualty.

E. **Encroachments.** None of the improvements on the Mortgaged Property create an encroachment over, across or upon any of the Mortgaged Property boundary lines, rights of way or easements and no buildings or other improvements on adjoining land create such an encroachment.

F. **Enforceability.** The Note, this Deed of Trust, and the Economic Development Agreement all constitute legal, valid and binding obligations of Grantor enforceable in accordance with their respective terms.

IV. **GRANTOR’S COVENANTS AND AGREEMENTS.**

So long as the Obligations or any part thereof remains unpaid, Grantor covenants and agrees with Beneficiary as follows:
A. **Payment and Performance.** Grantor covenants to promptly and timely pay the Note Obligations in the manner and at the time provided for in the Note and covenants to promptly and timely pay and perform the rest of the Obligations in the manner and at the time provided for in this Deed of Trust and the Economic Development Agreement.

B. **Operation of Mortgaged Property.** Grantor will operate the Mortgaged Property in accordance with all Applicable Laws and will pay all fees or charges of any kind in connection therewith. Grantor will keep the Mortgaged Property occupied so as not to impair the insurance carried thereon. Grantor will not use or occupy, or allow the use or occupancy of, the Mortgaged Property in any manner which violates any Applicable Law or which constitutes a public or private nuisance or which makes void, voidable or cancelable, any insurance then in force with respect thereto. Grantor will not initiate or permit any zoning reclassification of the Mortgaged Property or seek any variance under existing zoning ordinances applicable to the Mortgaged Property or use or permit the use of the Mortgaged Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Applicable Laws. Grantor will not impose any restrictive covenants or encumbrances upon the Mortgaged Property, execute or file any subdivision plat affecting the Mortgaged Property or consent to the annexation of the Mortgaged Property to any municipality, without the prior written consent of Beneficiary. Grantor will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be materially lessened. Grantor will allow Beneficiary or its authorized representative to enter the Mortgaged Property at any reasonable time to inspect the Mortgaged Property and Grantor will assist Beneficiary or said representative in whatever way necessary to make such inspection.

C. **Other Liens and Debts Relating to the Mortgaged Property.** Grantor will cause all debt and liabilities of any character, including without limitation, all debt and liabilities for labor, material and equipment and all debt and charges for utilities servicing the Mortgaged Property, incurred in the construction, maintenance, operation and development of the Mortgaged Property, to be timely paid, and not permit any liens on the Mortgaged Property, provided that Grantor may finance construction of and renovations to the Improvements, subject to the provisions of this Deed of Trust.

D. **Ad Valorem Taxes.** Grantor will cause to be paid prior to delinquency all taxes and assessments heretofore or hereafter levied or assessed against the Mortgaged Property, or any part thereof, or against Trustee or Beneficiary for or on account of the Note or any other Obligations or the interest created by this Mortgage and will furnish Beneficiary with receipts showing payment of such taxes and assessments prior to the applicable default date therefor; provided that Grantor may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment; provided, however, that in any event each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date any writ or order is issued under which the Mortgaged Property or any part thereof may be sold.

E. **Repair and Maintenance.** Grantor will keep the Mortgaged Property in good order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Mortgaged Property to be misused, abused or wasted or to deteriorate. Grantor will not, without the prior written consent of Beneficiary, (a) remove from the Mortgaged Property any fixtures or personal property covered by this Mortgage except those replaced by Grantor by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest (except that created by this Deed of Trust and Mortgage); or (b) make any structural alteration to the Mortgaged Property or any other alterations thereto which impair the value thereof.

F. **Insurance and Casualty.**

1. Grantor will keep the Mortgaged Property insured against loss or damage by fire, explosion, windstorm, hail, flood (if the Mortgaged Property shall at any time be located in an identified “flood prone area” in which flood insurance has been made available), tornado and such other hazards, as may be required by Beneficiary by policies of fire, extended coverage and other insurance in such company or companies. Such policies shall be issued through insurers acceptable to Beneficiary, and shall be in such amounts, upon such terms and provisions, and with such endorsements, all as may be reasonably acceptable to Beneficiary, but in no event less than the greater of the then current assessed value of the Mortgaged Property or the amount owed to Beneficiary. Grantor must annually, and more frequently upon written request, furnish Beneficiary evidence of paid-up casualty insurance for such amounts as are acceptable to Beneficiary. Grantor must deliver to Beneficiary the original policies evidencing such
insurance and any additional insurance which shall be taken out upon any part of the Mortgaged Property and receipts evidencing the payment of all premiums, and deliver certificates evidencing renewals of all such policies of insurance to Beneficiary at least fifteen (15) days before any such insurance shall expire. Without limiting the discretion of Beneficiary with respect to required endorsements to insurance policies, Grantor further agrees that all such policies shall provide that proceeds thereunder will be payable to Beneficiary as Beneficiary’s interest may appear pursuant and subject to a mortgage clause (without contribution) of standard form attached to or otherwise made a part of the applicable policy.

(2) In the event any of the Mortgaged Property covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail or by any other casualty against which insurance shall have been required hereunder, (a) Beneficiary may, but shall not be obligated to, make proof of loss if not made promptly by Grantor; (b) each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor; and (c) Beneficiary shall have the right to apply the insurance proceeds first, to reimburse Beneficiary or Trustee for all costs and expenses, including, without limitation, reasonable attorneys’ fees, incurred in connection with the collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the sole discretion of Beneficiary, in payment (without premium or penalty) of the Obligations, either in whole or in part, in the order determined by Beneficiary in its sole discretion, or to the repair, restoration or replacement, either partly or entirely, of the Mortgaged Property so destroyed or damaged, provided that, any insurance proceeds held by Beneficiary to be applied to the repair, restoration or replacement of the Mortgaged Property shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Grantor with such terms, conditions and requirements as may be reasonably imposed by Beneficiary. In any event the unpaid portion of the Obligations shall remain in full force and effect and Grantor shall not be excused in the payment thereof. If any act or occurrence of any kind or nature (including any casualty on which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, Grantor shall give immediate written notice thereof to Beneficiary and, unless otherwise so instructed by Beneficiary, shall promptly, at Grantor’s sole cost and expense and regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction in accordance with plans and specifications submitted to and approved by Beneficiary.

G. Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, or any other proceedings arising out of injury or damage to the Mortgaged Property, or any portion thereof, Grantor will notify Beneficiary of the pendency of such proceedings. Grantor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Beneficiary, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings (unless Beneficiary is the condemning authority). All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property shall be paid to Beneficiary and shall be applied, first, to reimburse Beneficiary or Trustee for all costs and expenses, including, without limitation, reasonable attorneys’ fees, incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the sole discretion of Beneficiary, to the payment of the Obligations (without premium or penalty) in the order determined by Beneficiary in its sole discretion or paid out to repair or restore the Mortgaged Property so affected by such condemnation, injury or damage in the same manner as provided in Subsection F. of this Section. In any event the unpaid portion of the Obligations shall remain in full force and effect and Grantor shall not be excused in the payment thereof. Grantor hereby assigns and transfers all such proceeds, judgments, decrees and awards to Beneficiary and agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Beneficiary may request. Beneficiary shall not be, in any event or circumstances, liable or responsible for the failure to collect, or the failure to exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

H. Books and Records. Grantor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made as to all operations on the Mortgaged Property, and will permit all such books and records (including, without limitation, all leases, contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction and operation of the improvements forming a part of the Mortgaged Property) to be inspected and copied by Beneficiary and its duly authorized representatives during reasonable business hours following three (3) days’ written notice thereof to Grantor.
I. Escrow. No escrow will be required, unless Grantor fails to keep the Mortgaged Property insured or fails to pay ad valorem property taxes as required herein, and Beneficiary is required to pay for either insurance or property taxes while the Obligations or any of them are outstanding. In such case, if Beneficiary elects not to declare a Default (as hereinafter defined) or declares a Default but elects not to foreclose, in order to secure the performance and discharge of Grantor’s obligations under Subsections D. and F. of this Section, but not in lieu of such obligations, upon Beneficiary’s request, Grantor will be required to thereafter deposit with Beneficiary a sum equal to ad valorem taxes, assessments and charges against the Mortgaged Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Beneficiary and prorated to the end of the calendar month following the month during which this Deed of Trust is executed and delivered, and thereafter will deposit with Beneficiary, on each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Beneficiary) to permit Beneficiary to pay, at least fifteen (15) days prior to the due date thereof, the next maturing ad valorem taxes, assessments and charges and premiums for such policies of insurance. All such funds so deposited shall bear no interest; provided, however, that, if a Default (as hereinafter defined) shall have occurred, such funds may at Beneficiary’s option be applied to the payment of the Obligations. If funds on deposit with Beneficiary are insufficient to make all payments due, Grantor will deposit with Beneficiary the amount of any deficiency.

J. Further Assurances. The parties will, on request of the other party, promptly (a) correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents and leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and Mortgage.

K. Fees and Expenses; Indemnification. Grantor will pay all appraisal fees (provided, however, that no more than one (1) appraisal shall be ordered during any calendar year), filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, uniform commercial code search fees, escrow fees, attorneys’ fees, and all other costs and expenses of every character incurred by Grantor or Beneficiary in connection with Beneficiary’s enforcement of the provisions of this Deed of Trust and Mortgage, either at the closing thereof or at any time during the term thereof, or otherwise attributable or chargeable to Grantor as owner of the Mortgaged Property, and will reimburse Beneficiary for all such costs and expenses incurred by Beneficiary. Grantor shall pay all expenses and reimburse Beneficiary for any expenditures, including, without limitation, reasonable attorneys’ fees and legal expenses, incurred or expended in connection with (a) the breach by Grantor of any covenant in this Deed of Trust or the Economic Development Agreement; (b) Beneficiary’s exercise of any of its rights and remedies hereunder or under the Note or the Economic Development Agreement or Beneficiary’s protection of the Mortgaged Property and its lien and security interest therein; or (c) any amendments to this Deed of Trust, the Note, or the Economic Development Agreement. Grantor will indemnify and hold harmless Trustee and Beneficiary (for purposes of this Subsection, the terms “Trustee” and “Beneficiary” shall include the directors, officers, partners, employees, representatives and agents of Trustee and Beneficiary, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Trustee and Beneficiary, respectively) from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorneys’ fees) which may be imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon the Mortgaged Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with this Deed of Trust and Mortgage, the Economic Development Agreement, the Note, the Mortgaged Property or with any other documents relating to the sale of the Real Property by Beneficiary to Grantor. However, such indemnities shall not apply to any indemnified party to the extent the subject of the indemnification is caused by or arises out of the negligence, gross negligence or willful misconduct of such indemnified party. The foregoing indemnities shall not terminate upon release, foreclosure or other termination of this Deed of Trust and Mortgage but will survive foreclosure of this Deed of Trust and Mortgage or conveyance in lieu of foreclosure and the repayment of the Obligations and the discharge and release of this Deed of Trust and Mortgage and the completion of any obligation under the Economic Development Agreement. Any amount to be paid hereunder by Grantor to Beneficiary and/or Trustee shall be an obligation owing by Grantor to Beneficiary payable on demand.

L. Warranty of Title. Grantor will warrant and forever defend the title to the Mortgaged Property against the claims
of all persons making any claim to the same or any part thereof, subject to the Permitted Encumbrances.

M. **Permitted Encumbrances.** Grantor will comply with and will perform all of the covenants, agreements and obligations imposed upon it or the Mortgaged Property in the Permitted Encumbrances in accordance with their respective terms and provisions. Grantor will not modify or permit any modification of any Permitted Encumbrance without the prior written consent of Beneficiary.

N. **Title Insurance.** If requested by Beneficiary, Grantor shall, at its sole cost and expense, obtain and maintain a Mortgagee’s Policy of Title Insurance issued by a title company reasonably acceptable to Beneficiary.

O. **Environmental.** Grantor will not cause or permit the Mortgaged Property or Grantor to be in violation of, or do anything or permit anything to be done which will subject the Mortgaged Property to any remedial obligations under, any Applicable Environmental Laws, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to Grantor and/or the Mortgaged Property, and Grantor will promptly notify Beneficiary in writing of any existing, pending or, to the best knowledge of Grantor, threatened investigation or inquiry by any governmental authority in connection with any Applicable Environmental Laws. Grantor shall obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Laws. Grantor shall take all steps necessary to determine that no hazardous substances or solid waste are being disposed of or otherwise released on or to the Mortgaged Property. Grantor will not cause or permit the disposal or other release of any hazardous substance or solid waste on or to the Mortgaged Property and covenants and agrees to keep or cause the Mortgaged Property to be kept free of any hazardous substance or solid waste and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense. Upon Beneficiary’s reasonable written request, at any time and from time to time during the existence of this Deed of Trust and Mortgage, Grantor will provide at Grantor’s sole expense an inspection or audit of the Mortgaged Property from an engineering or consulting firm approved by Beneficiary, indicating the presence or absence of hazardous substances and solid wastes on the Mortgaged Property. If Grantor fails to provide same after forty-five (45) days’ written notice, Beneficiary may order same, and Grantor grants to Beneficiary and its agents, employees, contractors and consultants access to the Mortgaged Property and a license (which is coupled with an interest and irrevocable while this Deed of Trust and Mortgage is in effect) to perform inspections and tests. The cost of such inspections and tests shall be an obligation owing by Grantor to Beneficiary payable on demand.

P. **Asbestos.** Grantor covenants and agrees that it will not install in the Mortgaged Property, nor permit to be installed in the Mortgaged Property, asbestos, material containing asbestos which is or may become friable or material containing asbestos deemed hazardous by any Applicable Environmental Law, and that if any such asbestos or material containing asbestos exists in or on the Mortgaged Property, whether installed by Grantor or others, Grantor will remove the same (or if removal is prohibited by law, will take whatever action is required by law, including, without limitation, implementing any required operation and maintenance program) promptly upon discovery at its sole expense. Upon Beneficiary’s reasonable written request, at any time and from time to time during the existence of this Deed of Trust and Mortgage, Grantor shall provide at Grantor’s sole expense an inspection or audit of the Mortgaged Property from an engineering or consulting firm approved by Beneficiary, indicating the presence or absence of asbestos or material containing asbestos on the Mortgaged Property. If Grantor fails to provide same after thirty (30) days’ written notice, Beneficiary may order same, and Grantor grants to Beneficiary and its agents, employees, contractors and consultants access to the Mortgaged Property and a license (which is coupled with an interest and irrevocable while this Deed of Trust and Mortgage is in effect) to perform inspections and tests. The cost of such inspections and tests shall be an obligation owing by Grantor to Beneficiary payable on demand.

Q. **Right of Beneficiary to Perform.** Grantor agrees that if Grantor fails to perform any act or to take any action which Grantor is required to perform or take under this Deed of Trust, the Note, or the Economic Development Agreement, or to pay any money which Grantor is required to pay under this Deed of Trust, the Note, or the Economic Development Agreement, or takes any action prohibited hereby or thereby, Beneficiary, in Grantor’s name or in its own name, may but shall not be obligated to perform or cause to be performed such act or take such action. Beneficiary’s performance, as set forth in the preceding sentence, will not constitute a waiver of such Default or the Trustee’s power to enforce the provisions of this Deed of Trust. Any amounts due and owing by Grantor to Beneficiary pursuant to this Deed of Trust, the Note, or the Economic Development Agreement shall be repaid by Grantor to Beneficiary on demand and shall bear interest from the date such amount becomes due until paid at the rate of interest payable on matured but unpaid principal of or interest on the Note, and if not repaid, shall be added to the amounts owed by Grantor and secured by this Deed of Trust and Mortgage.
R. Indemnification Regarding Environmental Matters. Grantor agrees to indemnify and hold Beneficiary and Trustee (for purposes of this Section, the terms “Beneficiary” and “Trustee” shall include the directors, officers, partners, employees, representatives and agents of Beneficiary and Trustee, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or otherwise affiliated with Beneficiary and Trustee, respectively) harmless from and against, and to reimburse Beneficiary and Trustee with respect to, any and all claims, demands, losses, damages (including consequential damages), liabilities, causes of action, judgments, penalties, costs and expenses (including attorneys’ fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, imposed on, asserted against or incurred by Beneficiary and/or the Trustee at any time and from time to time by reason of, in connection with or arising out of (a) the breach of any representation or warranty of Grantor as set forth herein regarding asbestos, material containing asbestos or Applicable Environmental Laws, (b) the failure of Grantor to perform any obligation herein required to be performed by Grantor regarding asbestos, material containing asbestos or Applicable Environmental Laws, (c) any violation on or before the Release Date (as hereinafter defined) of any Applicable Environmental Law in effect on or before the Release Date, (d) the removal of hazardous substances or solid wastes from the Mortgaged Property (or if removal is prohibited by law, the taking of whatever action is required by law), (e) the removal of asbestos or material containing asbestos from the Mortgaged Property (or if removal is prohibited by Applicable Environmental Laws, the taking of whatever action is required by Applicable Environmental Laws, including, without limitation, the implementation of any required operation and maintenance program), (f) any act, omission, event or circumstance existing or occurring on or prior to the Release Date (including, without limitation, the presence on the Mortgaged Property or release from the Mortgaged Property of any hazardous substance or solid waste disposed of or otherwise released on or prior to the Release Date), resulting from or in connection with the ownership, construction, occupancy, operation, use and/or maintenance of the Mortgaged Property, regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence, and (g) any and all claims or proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment or any other injury or damage resulting from or relating to any hazardous substance or solid waste located upon or migrating into, from or through the Mortgaged Property (whether or not any or all of the foregoing was caused by Grantor or its tenant or subtenant, or a prior owner of the Mortgaged Property or its tenant or subtenant, or any third party and whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of such substance or waste or the mere presence of such substance or waste on the Mortgaged Property). WITHOUT LIMITATION, THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LOSSES, DAMAGES (INCLUDING CONSEQUENTIAL DAMAGES), LIABILITIES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS’ FEES AND COURT COSTS) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE AS A RESULT OF STRICT LIABILITY, WHETHER UNDER APPLICABLE ENVIRONMENTAL LAWS OR OTHERWISE. However, such indemnities shall not apply to any indemnified party to the extent the subject of the indemnification is caused by or arises out of the negligence, gross negligence or willful misconduct of such indemnified party. The term “Release Date” as used herein shall mean the earlier of the following two dates: (a) the date on which the Obligations has been paid and performed in full and this Deed of Trust and Mortgage has been released, or (b) the date on which the lien of this Deed of Trust and Mortgage is foreclosed or a conveyance by deed in lieu of such foreclosure is fully effective; provided, if such payment, performance, release, foreclosure or conveyance is challenged, in Bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The foregoing indemnities shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Deed of Trust and Mortgage but will survive the Release Date, foreclosure of this Deed of Trust and Mortgage or conveyance in lieu of foreclosure, and the repayment of the Obligations and the discharge and release of this Mortgage and the other Loan Documents. Any amount to be paid hereunder by Grantor to Beneficiary and/or Trustee shall be an obligation owing by Grantor to Beneficiary payable on demand. Nothing in this Section, elsewhere in this Deed of Trust and Mortgage, the Note, or the Economic Development Agreement shall limit or impair any rights or remedies of Beneficiary and/or Trustee against Grantor or any third party under Applicable Environmental Laws, including without limitation, any rights of contribution or indemnification available hereunder or thereunder.

V. ASSIGNMENT OF RENTS, LEASES, PROFITS, INCOME, AND CONTRACTS
A. Assignment of Rents. Grantor does hereby absolutely and unconditionally assign, transfer and set over to Beneficiary all Rents and all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts (including any insurance policies and bonds) relating to the Mortgaged Property; subject however to a license hereby granted by Beneficiary to Grantor to collect and receive all of the foregoing, subject to the terms and conditions hereof. Notwithstanding anything contained in this Deed of Trust or the Economic Development Agreement to the contrary, the assignment in this Section is an absolute, unconditional and presently effective assignment and not merely a security interest. Upon the occurrence of a Default (as hereinafter defined), such license shall automatically and immediately terminate; provided, however, that Beneficiary shall not be deemed to have taken possession of the Mortgaged Property except on the exercise of its option to do so, evidenced by its demand and overt act for such purpose. It shall not be necessary for Beneficiary to institute any type of legal proceedings or take any other action whatsoever to enforce the assignment provisions in this Section.

B. Assignment of Leases. Grantor hereby assigns to Beneficiary all existing and future Leases. Grantor hereby further assigns to Beneficiary all guaranties of tenants’ performance under the Leases. Prior to a Default, Grantor shall have the right, without joinder of Beneficiary, to enforce the Leases, unless Beneficiary directs otherwise.

C. Warranties Concerning Leases and Rents. Grantor represents and warrants that:

1. Grantor has or will have good title to the Leases and Rents and authority to assign them, and no other person or entity has any right, title or interest therein, and Grantor will not assign any such right, title or interest therein to any other person;

2. all Leases are valid, unmodified and in full force and effect, except as indicated herein, and as of the date of the signing of this Deed of Trust no default exists thereunder;

3. unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged except as provided or permitted herein; and

4. no Rents have been or will be anticipated, waived, released, discounted, set off or compromised except for prudent business reasons.

D. Grantor’s Covenants of Performance. Grantor covenants to:

1. perform all of its obligations under the Leases;

2. enforce the tenant’s obligations under the Leases;

3. defend, at Grantor’s expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party; and

4. neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed of Trust and Mortgage and any other encumbrances permitted by this Deed of Trust and Mortgage.

E. Prior Approval for Actions Affecting Leases. Except as expressly permitted otherwise in this Deed of Trust, Grantor shall not, without the prior written consent of Beneficiary (which shall not be unreasonably withheld, conditioned or delayed):

1. receive or collect Rents more than one month in advance;

2. encumber or assign future Rents;

3. waive or release any obligation of any tenant under the Leases except for prudent business reasons;

4. cancel, terminate or modify any of the Leases; cause or permit any cancellation, termination or surrender of
any of the Leases; or commence any proceedings for dispossession of any tenant under any of the Leases, except upon default by the tenant thereunder or except for prudent business reasons; and

5. permit any assignment of the Leases, except pursuant to terms in existing Leases.

F. **Beneficiary in Possession.** Beneficiary’s acceptance of this assignment shall not, prior to entry upon and taking possession of the Mortgaged Property by Beneficiary, be deemed to constitute Beneficiary a “mortgagee in possession,” nor obligate Beneficiary to appear in or defend any proceedings relating to any of the Leases or to the Mortgaged Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Grantor by any tenant and not delivered to Beneficiary. Beneficiary shall not be liable for any injury or damage to any person or property in or about the Mortgaged Property.

G. **Indemnification of Beneficiary by Grantor.** Grantor hereby indemnifies and holds Beneficiary (which shall include the officers, employees, representatives and agents of Beneficiary and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Beneficiary) harmless from all liability, damage or expense imposed on or incurred by Beneficiary from any claims under the Leases. All amounts indemnified against hereunder, including, without limitation, attorneys’ fees, if paid by Beneficiary shall bear interest at the maximum lawful rate and shall be payable by Grantor on demand. The foregoing indemnities shall not terminate upon the foreclosure, release or other termination of this Deed of Trust and Mortgage but will survive foreclosure of this Deed of Trust and Mortgage or conveyance in lieu of foreclosure and the repayment of the Obligations and the discharge and release of this Deed of Trust and Mortgage. Grantor’s obligations under this Section shall be an obligation owing by Grantor to Beneficiary payable on demand.

H. **Merger.** There shall be no merger of the leasehold estates created by the Leases with the fee estate of the Land without the prior written consent of Beneficiary.

I. **Right to Rely.** Grantor hereby irrevocably authorizes and directs the tenants under the Leases to pay Rents to Beneficiary following an Event of Default (defined below) and upon written demand by Beneficiary without further consent of Grantor, and the tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payment to Beneficiary shall constitute payment to Grantor under the Leases. The assignment of Rents set forth in this Section is not contingent upon any notice or demand by Beneficiary to the tenants.

VI. **RELEASE UPON FULL PAYMENT AND SATISFACTION.**

Should Grantor timely perform and pay all of the Obligations, then this conveyance shall become null and void and of no further force and effect, and shall be released by the Beneficiary.

VII. **DEFAULT.**

A breach of Subsections E. or H. of this Section shall constitute an immediate default by Grantor, and Beneficiary shall not be required to provide any notice to Grantor prior to exercising its remedies under this Deed of Trust and Mortgage. Except for breaches listed in Subsections E. and H. of this Section, in the event Grantor should breach any of the obligations or terms of this Deed of Trust and Mortgage, the Note, or the Economic Development Agreement, or commit a breach as defined below, Beneficiary shall give Grantor written notice of such breach and a reasonable opportunity to cure such breach, provided, however, that Beneficiary is not obligated to provide more than three (3) such notices for the same type of failure during any twelve (12) month period, and any further breaches of the same type during such twelve (12) month period shall be deemed immediate events of default for which Beneficiary shall not be required to provide any notice to Grantor prior to exercising its remedies under this Deed of Trust and Mortgage. All cure periods shall commence on the day that written notice is given to Grantor. Written notice shall be deemed to have been given upon the earlier of (a) actual receipt, (b) the second business day following the deposit with a nationally recognized overnight delivery service, such as Federal Express, or (c) five (5) days after being deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid. Grantor shall be in Default hereunder if any of the following events occur, and such breach is not cured within the applicable period after written notice of such breach:

A. **Failure to Pay Note or other monetary payment.** The failure, refusal or neglect of Grantor to make due and
punctual payment of principal or interest on any monetary payment required by the Note or the Contract or this Deed of Trust, or any portion thereof, as the same shall become due and payable, and Grantor fails to cure such breach within ten (10) days of written notice to Grantor of same; or

B. **Non-Performance of Covenants.** The failure of Grantor to timely and properly observe, keep or perform any covenant, agreement, warranty or condition stated in the Note or the Economic Development Agreement or this Deed of Trust, or breaches any provision of this Section other than the obligations described in Subsections A, E, or H of this Section, and such failure continues for more than thirty (30) days after written notice thereof shall have been given by Beneficiary to Grantor (or such longer period of time as is reasonably necessary under the circumstances so long as Grantor commences to cure such failure within thirty (30) days of written notice and diligently pursues such cure to completion); or

C. **False Representation.** Any representation contained herein or in any other Loan Document or otherwise made by Grantor or any other Person to Beneficiary in connection with the Obligations is false or misleading in any material respect; or

D. **Default on Terms of Contract.** Any event of Default under the Economic Development Agreement; or

E. **Action by Other Lienholder.** The holder of any lien or security interest on the Mortgaged Property (without hereby implying the consent of Beneficiary to the existence or creation of any such lien or security interest) declares a default thereunder or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; or

F. **Transfer or Pledge of Mortgaged Property.** Until the earlier of a period of one hundred twenty (120) months after closing or until Purchaser fulfills all of its obligations under both the Note and the Economic Development Agreement, if, Grantor sells, exchanges, assigns, transfers, conveys (including any contract for deed), pledges (except as expressly permitted herein), leases for a period longer than one hundred twenty (120) months, grants an option to purchase, or otherwise disposes of all or any part of the Mortgaged Property or any interest therein (except for the disposition of worn-out or obsolete personal property or fixtures and leases to commercial tenants for less than one hundred twenty (120) months at reasonable rental rates consistent with the operation of a commercial retail center), or legal or equitable title to the Mortgaged Property, or any interest therein, is vested in any other party, in any manner whatsoever, by operation of law or otherwise (except for leases to commercial tenants for less than one hundred twenty (120) months at reasonable rental rates consistent with the operation of a commercial retail center), without the prior written consent of Beneficiary, which consent may be withheld in Seller's sole discretion. The consent of Beneficiary required hereunder may be refused by Beneficiary in its sole discretion or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole discretion of Beneficiary, including, without limitation, the right to change the interest rate, date of maturity or payments of principal and/or interest on the Note, to require payment of any amount as additional consideration as a transfer fee or otherwise and to require assumption of the Note and this Deed of Trust and Mortgage; or

G. **Other Liens.** Without the prior written consent of Beneficiary, and except as permitted in this Deed of Trust and Mortgage, Grantor creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Mortgaged Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Mortgaged Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust and Mortgage, or acquires any fixtures, equipment or other property forming a part of the Mortgaged Property pursuant to a lease, license or similar agreement. The creation of a subordinate lien, any conveyance under threat or order of condemnation, or the passage of title by operation of law will not constitute an event of Default, but in any such event, Grantor’s obligations to pay and perform the Obligations shall continue unabated, and be binding on Grantor, and Grantor’s successors in title, as the case may be; or

H. **Liquidation of Grantor.** Grantor dissolves or ceases to do business.

**VIII. REMEDIES AND RELATED RIGHTS**

If a Default shall occur, Beneficiary may exercise anyone or more of the following remedies and shall, in addition to any other
rights, have the following related rights, without notice (unless notice is required by Applicable Laws):

A. **Acceleration.** Upon the occurrence of a Default, Beneficiary shall have the option of declaring all the Obligations in their entirety to be immediately due and payable, and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by applicable law as Beneficiary may elect. To the fullest extent permitted by law, Grantor waives demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

B. **Foreclosure.**

   (1) If a Default occurs, Trustee, at the request of Beneficiary, will enforce this Deed of Trust, and after advertising the time, place and terms of the sale of the above-described and conveyed Property for at least twenty-one (21) days preceding the date of sale by posting written or printed notice thereof at the courthouse door of the county wherein the Property to be sold is situated, which notice may be posted by the Trustee acting, or by any person for him, and if then required by applicable law of the State of Texas, notice of the proposed sale shall be given also by filing at least twenty-one (21) days before the date of the sale, a copy of such notice in the office of the county clerk of the county wherein the Property to be sold is situated, which notice may be filed by the Trustee acting, or any person for him, and the Beneficiary (or other holder of the indebtedness secured hereby) shall, at least twenty-one (21) days preceding the date of sale, serve written or printed notice of the proposed sale by certified mail on Grantor according to the records of Beneficiary, by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to Grantor at Grantor’s most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service and the Trustee shall sell the Property at public auction in accordance with such notice at the courthouse door of the county where such Property is situated on the first Tuesday in any month between the hours of 10 o'clock a.m. and 4 o'clock p.m. to the highest bidder for cash, and make due conveyance to the purchaser or purchasers, with general warranty binding Grantor, its successors and assigns. The sale will be made in accordance with Texas Property Code Section 51.002 or any successor statute.

   (2) If the Mortgaged Property is situated in more than one county, then required notices will be given in both or all of such counties, the Mortgaged Property may be sold in either or any such county, and such notices shall designate the county where the Mortgaged Property will be sold.

   (3) The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Beneficiary may request, and any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by Trustee of less than the whole of the Mortgaged Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Mortgaged Property shall be sold; and, if the proceeds of such sale of less than the whole of the Mortgaged Property shall be less than the aggregate of the Obligations and the expense of executing this trust as provided herein, this Deed of Trust and Mortgage shall remain in full force and effect as to the unsold portion of the Mortgaged Property just as though no sale had been made; provided, that Grantor shall never have any right to require the sale of less than the whole of the Mortgaged Property but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Mortgaged Property.

   (4) After each sale, Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Grantor, conveying the property so sold to the purchaser or purchasers in fee simple with general warranty of title, and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Beneficiary may deem necessary until all of the Mortgaged Property has been duly sold and all Obligations has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the power of sale hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder.
(5) Any and all statements of fact or other recitals made in any deed or deeds given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the Obligations, or as to the occurrence of any Default, or as to Beneficiary having declared all of such Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee or any substitute or successor, or as to the appointment of any substitute or successor by Trustee, or as to any other act or thing having been duly done by Beneficiary or by Trustee or any substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. Trustee, his successor or substitute, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including, without limitation, the posting of notices and the conducting of sales, but in the name and on behalf of Trustee, his successor or substitute. This Deed of Trust shall be effective as a mortgage as well as a deed of trust and upon the occurrence of a Default may be foreclosed as to any of the Mortgaged Property in any manner permitted by the laws of the State of Texas or of any other state in which any part of the Mortgaged Property is situated, and any foreclosure suit may be brought by Trustee or by Beneficiary. Beneficiary may at any time before the sale direct Trustee to abandon the sale, and may at any time thereafter direct Trustee to again commence foreclosure.

(6) Whether or not foreclosure is commenced by Trustee, Beneficiary may at any time after a Default occurs institute suit for collection of all or any part of the Obligations or foreclosure of the lien created by this Deed of Trust and Mortgage, or both. If Beneficiary institutes suit for collection of the Obligations and foreclosure of the lien of this Deed of Trust and Mortgage, Beneficiary may at any time before the entry of final judgment dismiss the same, and require Trustee to sell the Mortgaged Property in accordance with the provisions of this Deed of Trust and Mortgage. No single sale or series of sales under this Deed of Trust and Mortgage or by judicial foreclosure will extinguish the lien or exhaust the power of sale under this Deed of Trust and Mortgage except with respect to the items of property sold.

C. Proceeds of Sale. The proceeds of any sale held by Trustee or any receiver or public officer in foreclosure of the liens evidenced hereby shall be applied in the following order of priority: (a) to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all court costs and charges of every character in the event foreclosed by suit, attorneys’ fees and a reasonable fee to Trustee acting under the provisions of this Deed of Trust and Mortgage if foreclosed by power of sale as provided herein, not exceeding five percent (5%) of the proceeds of such sale; (b) to the payment in full of the Obligations (including, without limitation, the principal and interest due and unpaid on the Note; (c) the Liquidated Damages, as defined below; (d) other monetary obligations owed by Grantor under this Deed of Trust and Mortgage or the Economic Development Agreement; and (e) attorneys’ fees and any other expenses incurred by Beneficiary in enforcing its rights hereunder; in such order as Beneficiary may elect in its sole direction; and (f) the remainder, if any there shall be paid to Grantor or to such other party or parties as may be entitled thereto by applicable law.

Should the Trustee, at the request of the Beneficiary, and upon default by Grantor, foreclose on the Property, the monetary value of any Contract Obligations which are still outstanding other than the Obligations, and the resulting damages to Beneficiary resulting from Grantor’s failure to meet those Obligations, will be deemed to be FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00) (“the Liquidated Damages”). The Liquidated Damages are in addition to, and not an approximation of the Note Obligations. The Liquidated Damages shall not be considered a penalty, but shall be deemed as reasonable liquidated damages for then-current value of the portion of the Contract Obligations which are still outstanding, and the damages incurred by Beneficiary due to Grantor’s default on such non-monetary obligations. The amount of the Liquidated Damages is being fixed by agreement between Grantor and Beneficiary because of the impracticality and difficulty of ascertaining the actual then-current value of the outstanding Contract Obligations in the event of Default by Grantor, and the resulting damages to Beneficiary resulting from such a Default by Grantor, and shall be added to the amounts owed by Grantor to Beneficiary and to the lien secured by this Deed of Trust. In the event of foreclosure, the total amount of the lien secured by this Deed of Trust shall be deemed to be the total of (a) the Liquidated Damages, (b) the amounts owed by Grantor to Beneficiary under the Note, and (c) any other monetary sums owed by Grantor under this Deed of Trust and Mortgage or the Economic Development Agreement.

D. Beneficiary as Purchaser. Beneficiary shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and if Beneficiary purchases at any such sale Beneficiary shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid,
the Obligations owing to Beneficiary.

E. **Remedies Cumulative.** All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any this Deed of Trust and Mortgage or the Economic Development Agreement, or any part thereof, or otherwise benefitting Beneficiary, and Trustee and Beneficiary shall, in addition to the remedies herein provided, be entitled to avail themselves of all such other remedies as may now or hereafter exist at law or in equity for the collection of the Obligations and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and resort to any remedy provided for by this Deed of Trust and Mortgage, or under the Economic Development Agreement, or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

IX. **MISCELLANEOUS PROVISIONS**

A. **Defeasance.** If all of the Obligations are paid as the same becomes due and payable and timely performed in full, if all of the covenants, warranties, undertakings and agreements made in this Deed of Trust and Mortgage, the Note, and the Economic Development Agreement are kept and performed, then and in that event only, all rights under this Deed of Trust and Mortgage shall terminate and the Mortgaged Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Beneficiary in due form at Grantor’s cost.

B. **Successor Trustee.** Trustee may be removed at any time with or without cause, at the option of Beneficiary, by written declaration of removal executed by Beneficiary, without any notice to or demand upon Trustee, Grantor or any other person. If at any time Trustee is removed, dies or refuses, fails or is unable to act as Trustee, Beneficiary may appoint any person as successor Trustee hereunder, without any formality other than a written declaration of appointment executed by Beneficiary. Immediately upon appointment, the successor Trustee so appointed automatically will be vested with all the estate and title in the Mortgaged Property, and with all of the rights, powers, privileges, authority, options and discretions, and charged with all of the duties and liabilities, vested in or imposed upon Trustee by this instrument, and any conveyance executed by any successor Trustee will have the same effect and validity as if executed by the Trustee named in this Deed of Trust.

C. **Liability and Indemnification of Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including, without limitation, Trustee’s negligence), except for Trustee’s gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other money (except to the extent required by law), and Trustee shall be under no liability for interest on any money received by him hereunder. Grantor will reimburse Trustee for, and indemnify and save him harmless against, any and all liability and expenses (including, without limitation, reasonable attorneys’ fees) which may be incurred by him in the performance of his duties hereunder (Trustee shall include the directors, officers, partners, employees, representatives and agents of Trustee and any persons or entities owned or controlled by, owning or controlling or under common control or affiliated with Trustee). The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Deed of Trust and Mortgage.

D. **Waiver by Beneficiary.** Beneficiary may at any time and from time to time in writing (a) waive compliance by Grantor with any covenant herein made by Grantor to the extent and in the manner specified in such writing; (b) consent to Grantor doing any act which hereunder Grantor is prohibited from doing, or consent to Grantor failing to do any act which hereunder Grantor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Mortgaged Property, or any interest therein, from the lien and security interest of this Deed of Trust and Mortgage without the joinder of Trustee; or (d) release any party liable, either directly or indirectly, from the Warranties, Covenants, or Obligations of this Deed of Trust and Mortgage or the Economic Development Agreement, without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Beneficiary hereunder except to the extent specifically agreed to by Beneficiary in such writing.

E. **Actions by Beneficiary.** The lien, security interest and other security rights of Beneficiary hereunder shall not be
impaired by any indulgence, moratorium or release granted by Beneficiary, including but not limited to (a) any renewal, extension, increase or modification which Beneficiary may grant with respect to any of the Obligations; (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant in respect of the Mortgaged Property, or any part thereof or any interest therein; or (c) any release or indulgence granted to any endorser, guarantor or surety of any of the Obligations. The taking of additional security by Beneficiary shall not release or impair the lien, security interest or other security rights of Beneficiary hereunder or affect the liability of Grantor or of any endorser or guarantor or other surety or improve the rights of any permitted junior lienholder in the Mortgaged Property.

F. **Rights of Beneficiary.** Beneficiary may waive any Default without waiving any other prior or subsequent Default. Beneficiary may remedy any default without waiving the Default remedied. Neither the failure by Beneficiary to exercise, nor the delay by Beneficiary in exercising, any right, power or remedy upon any Default shall be construed as a waiver of such Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by Beneficiary and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. Acceptance by Beneficiary of any payment in an amount less than the amount then due on any of the Obligations shall be deemed an acceptance on account only and shall not in any way affect the existence of a Default hereunder.

G. **Fixture Filing.** This Deed of Trust and Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Mortgaged Property and is to be filed for record in the real property records in the Office of the County Clerk for the county or counties where the Mortgaged Property (including said fixtures) is situated.

H. **Subrogation.** To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Mortgaged Property, such proceeds have been advanced by Beneficiary at Grantor’s request and Beneficiary shall be subrogated to any and all rights, security interests and liens owned or held by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released; provided that the terms and provisions of this Deed of Trust and Mortgage shall govern the rights and remedies of Beneficiary and shall supersede the terms, provisions, rights and remedies under and pursuant to the instruments creating the liens, security interests, charges or encumbrances to which Beneficiary is subrogated hereunder.

I. **Application of Obligations.** If any part of the Obligations cannot be lawfully secured by this Deed of Trust and Mortgage or if any part of the Mortgaged Property cannot be lawfully subject to the lien and security interest hereof to the full extent of the Obligations, then all payments made shall be applied on said Obligations first in discharge of that portion thereof which is unsecured by this Deed of Trust and Mortgage.

J. **Usury.** This Deed of Trust and Mortgage has been executed under, and shall be construed and enforced in accordance with, the laws of the State of Texas, except as such laws are preempted by federal law. This Deed of Trust and Mortgage and the Economic Development Agreement are intended to be performed in accordance with, and only to the extent permitted by, all applicable usury laws. If the application of any provision of the Mortgage or the Economic Development Agreement as to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the application of such provision to any other person or circumstance nor the remainder of the instrument in which such provision is contained shall be affected thereby and the remainder shall be enforced to the greatest extent permitted by Applicable Laws. It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary to at all times comply with the usury and other applicable laws now or hereafter governing the interest payable on the Obligations. If the applicable law is ever revised, repealed or judicially interpreted so as to render usurious any amount called for under this Deed of Trust and Mortgage, the Note, or the Economic Development Agreement, or contracted for, charged, taken, reserved or received with respect to the Obligations, or if Beneficiary’s exercise of the option to accelerate the maturity of the Obligations, or if any prepayment of the Obligations results in the payment of any interest in excess of that permitted by law, then it is the express intent of Grantor and Beneficiary that all excess amounts theretofore collected by Beneficiary be credited to the principal balance of the Note (or, if the Note and all of such other Obligations have been paid in full, refunded), and the provisions of this Deed of Trust and Mortgage, the Note, and the Economic Development Agreement, immediately be deemed reformed and the amounts thereafter collectable hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the then Applicable Laws, but so as to permit the
recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid, or agreed to be paid, for the use, forbearance, detention, taking, charging, receiving or reserving on the Obligations shall, to the extent permitted by Applicable Laws, be amortized, prorated, allocated and spread throughout the full term of such Obligations until payment in full so that the rate or amount of interest on account of such Obligations does not exceed the usury ceiling from time to time in effect and applicable thereto for so long as Obligations is outstanding under the Obligations. To the extent that Beneficiary is relying on Chapter 303 of the Texas Finance Code to determine the maximum rate (“Maximum Rate”) payable on the Obligations, Beneficiary will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303. To the extent federal law permits Beneficiary to contract for, charge or receive a greater amount of interest, Beneficiary will rely on federal law instead of such article, as amended, for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now in effect, Beneficiary may, at its option and from time to time, implement any other method of computing the Maximum Rate under such article, as amended, or under other applicable law by giving notice, if required, to Grantor as provided by applicable law now or hereafter in effect. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving tri-party accounts) apply to the Obligations. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

K. Notice. Any notice, request, demand or other communication required or permitted hereunder, or under the this Deed of Trust and Mortgage, the Note, or the Economic Development Agreement, (unless otherwise expressly provided therein) shall be given in writing by (a) personal delivery, (b) expedited delivery service with proof of delivery, or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address shown in this Deed of Trust and Mortgage, or to such different address as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of mail, five (5) days after deposit in a receptacle of United States mail; provided that, service of a notice required by Texas Property Code §51.002 shall be considered complete when the requirements of that statute are met.

L. Heirs, Successors and Assigns. Beneficiary may not assign its rights or obligations under this Deed of Trust, the Note or the Economic Development Agreement without Grantor’s prior express written consent. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor, including all successors in interest of Grantor in and to all or any part of the Mortgaged Property, and shall inure to the benefit of Trustee and Beneficiary and their respective heirs, successors, substitutes and assigns and shall constitute covenants running with the Mortgaged Property. All references in this Deed of Trust and Mortgage to Grantor, Trustee or Beneficiary shall be deemed to include all such heirs, devisees, representatives, successors, substitutes and assigns.

M. Severability. A determination that any provision of this this Deed of Trust and Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

N. Gender and Number. Within this this Deed of Trust and Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

O. Joint and Several. Where two or more persons or entities have executed this this Deed of Trust and Mortgage, unless the context clearly indicates otherwise, the term “Grantor” as used in this this Deed of Trust and Mortgage means the grantors hereunder or either or any of them and the obligations of Grantor hereunder shall be joint and several.

P. Consent of Beneficiary. Except where otherwise provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Beneficiary is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the reasonable discretion of Beneficiary.
Q. **Modification or Termination.** This Deed of Trust and Mortgage, the Note, and the Economic Development Agreement may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

R. **Entire Agreement.** This Deed of Trust and Mortgage, the Note, and the Economic Development Agreement, together with the documents referred to and incorporated therein, constitute the entire understanding and agreement between Grantor and Beneficiary with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Grantor and Beneficiary with respect thereto. Grantor hereby acknowledges that, except as stated in this Deed of Trust or the Economic Development Agreement, Beneficiary has made no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction or the Property which is the subject of this Deed of Trust and Mortgage, the Note, or the Economic Development Agreement, and that no Persons are or were authorized by Beneficiary to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to such transaction except those, if any, expressly stated in this Deed of Trust and Mortgage, the Note, or the Economic Development Agreement.

S. **Rules of Construction.** The section headings or captions in this Deed of Trust are for convenience and are not a part of this instrument for any purpose. Any action permitted to Beneficiary may be taken by any authorized officer, employee or agent of Beneficiary, or any attorney, accountant, environmental consultant or other advisor or professional retained by Beneficiary. Use of the term “including” does not imply any limitation on (but may expand) the antecedent reference. Unless the context clearly requires otherwise, the term “may” does not imply any obligation to act. Any reference to exhibits or schedules means the exhibits or schedules to this Deed of Trust, which are fully incorporated by reference into this Mortgage. Any reference to a particular document includes all modifications, supplements, replacements, renewals or extensions of that document, but this rule of construction does not authorize amendment of any document without Beneficiary’s consent.

T. **Change in Organization.** Grantor will not cause or permit any (a) change of Grantor’s chief executive office to a jurisdiction other than as represented below in this Deed of Trust, or (b) change the state of Grantor’s organization as it exists on the date of this Mortgage, or (c) change Grantor’s name as it exists on the date of this Deed of Trust, unless Grantor shall have notified Beneficiary in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Beneficiary for the purpose of further perfecting or protecting the security interest in favor of Beneficiary in the Mortgaged Property. In any written notice furnished pursuant to this Section, Grantor will expressly state that the notice is required by this Deed of Trust and contains facts that may require additional filings of financing statements or other notices for the purpose of continuing perfection of Beneficiary’s security interest in the Mortgaged Property.

U. **Authority.** The person executing this Deed of Trust on behalf of Grantor warrants and represents to Beneficiary that he/she has been duly authorized to execute this Deed of Trust and to bind Grantor hereunder.

V. **Addresses.** For purposes of notice, unless a different address is provided to the other parties in writing, the addresses of the parties are as follows:

**Beneficiary/Lender:**

Town of Flower Mound  
Attn: Town Manager  
Town Hall, 2121 Cross Timbers Road  
Flower Mound, Texas 75028

**Grantor/Borrower:**

Chris Gordon, Owner and Chief Financial Officer
X. **SUBORDINATION OF LIEN CREATED HEREUNDER**

Notwithstanding the other provisions of this Deed of Trust, Beneficiary agrees to subordinate Beneficiary’s rights under the Mortgage to any liens or deeds of trust created solely to fund the construction or renovations to the Improvements, but Beneficiary shall not be obligated to subordinate, and does not subordinate, Beneficiary’s rights under the Mortgage to any other liens or deeds of trust created in whole or in part for any other reasons or purposes. No such lien may contain any Mother Hubbard clause or other clause or provision creating a lien or deed of trust on any part of the Mortgaged Property for any other debt. Beneficiary does not subordinate Beneficiary’s rights under the Mortgage to any liens or deeds of trust created, in whole or in part for any other reasons or purposes.

END OF PAGE – SIGNATURES TO FOLLOW
Executed this _____ day of ______________, 2015.

OTD FM, LLC d/b/a Old Town Development, Grantor

By: ____________________________________ _______________
    Chris Gordon, Manager and Chief Financial Officer

STATE OF TEXAS §
§
COUNTY OF __________ §

Before me, the undersigned, a notary public, on this day personally appeared Chris Gordon, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the foregoing document in his capacity as the Manager and Chief Financial Officer of OTD FM, LLC d/b/a Old Town Development, Grantor, with full authority to do so, as the act of said corporation, for the purposes and consideration therein expressed.

Given under my hand and seal of office, this _____ day of ______________, 2015.

_____________________________________________
Notary Public in and for the State of Texas

After filing, please return to:

Tim G. Sralla
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Telephone: (817) 332-2580
Fax: (817) 332-4740
E-mail: tsralla@toase.com
EXHIBIT A
PERMITTED ENCUMBRANCES

Lease agreement with Restaurant as that term is defined in the Economic Development Agreement.
## Old Town Development/Mi Dia 5-year Cost-Benefit

### Benefit

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Year 8</th>
<th>Year 9</th>
<th>Year 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Property Value</td>
<td>$764,400</td>
<td>$787,332</td>
<td>$810,952</td>
<td>$835,281</td>
<td>$860,339</td>
<td>$886,149</td>
<td>$912,734</td>
<td>$940,116</td>
<td>$968,319</td>
<td>$997,369</td>
</tr>
<tr>
<td>Business Personal Property Value</td>
<td>$1,500,000</td>
<td>$1,545,000</td>
<td>$1,591,350</td>
<td>$1,639,091</td>
<td>$1,688,263</td>
<td>$1,738,911</td>
<td>$1,791,078</td>
<td>$1,844,811</td>
<td>$1,900,155</td>
<td>$1,957,160</td>
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<tr>
<td>Business Personal Property Tax Revenue</td>
<td>$6,585</td>
<td>$6,783</td>
<td>$6,986</td>
<td>$7,196</td>
<td>$7,411</td>
<td>$7,634</td>
<td>$7,863</td>
<td>$8,099</td>
<td>$8,342</td>
<td>$8,592</td>
</tr>
<tr>
<td>Annual Sales</td>
<td>$5,000,000</td>
<td>$5,150,000</td>
<td>$5,304,500</td>
<td>$5,463,635</td>
<td>$5,627,544</td>
<td>$5,796,370</td>
<td>$5,970,261</td>
<td>$6,149,369</td>
<td>$6,333,850</td>
<td>$6,523,866</td>
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<tr>
<td>Annual Sales Tax Revenue</td>
<td>$100,000</td>
<td>$103,000</td>
<td>$106,090</td>
<td>$109,273</td>
<td>$112,551</td>
<td>$115,927</td>
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<td>$122,987</td>
<td>$126,677</td>
<td>$130,477</td>
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<td>Sale Proceeds</td>
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<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Impact and Building Permit Fees</td>
<td>$80,000</td>
<td>$80,000</td>
<td>$80,000</td>
<td>$80,000</td>
<td>$80,000</td>
<td>$80,000</td>
<td>$80,000</td>
<td>$80,000</td>
<td>$80,000</td>
<td>$80,000</td>
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</tbody>
</table>

### Cost

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Year 8</th>
<th>Year 9</th>
<th>Year 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impact and Building Permit Fees</td>
<td>$130,000</td>
<td>$113,239</td>
<td>$116,636</td>
<td>$120,135</td>
<td>$123,739</td>
<td>$127,451</td>
<td>$131,275</td>
<td>$135,213</td>
<td>$139,270</td>
<td>$143,448</td>
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<tr>
<td>Sales Tax Note Offset</td>
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<td>$53,500</td>
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<td>$0</td>
<td>$0</td>
<td>$0</td>
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<td>$0</td>
<td>$0</td>
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### Analysis

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
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<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Year 8</th>
<th>Year 9</th>
<th>Year 10</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefit</td>
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<td>$113,239</td>
<td>$116,636</td>
<td>$120,135</td>
<td>$123,739</td>
<td>$127,451</td>
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<td>$135,213</td>
<td>$139,270</td>
<td>$143,448</td>
<td>$1,340,347</td>
</tr>
<tr>
<td>Cost</td>
<td>$130,000</td>
<td>$113,239</td>
<td>$116,636</td>
<td>$120,135</td>
<td>$123,739</td>
<td>$127,451</td>
<td>$131,275</td>
<td>$135,213</td>
<td>$139,270</td>
<td>$143,448</td>
<td>$220,000</td>
</tr>
<tr>
<td>Net Benefit</td>
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<td>$0</td>
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<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$1,120,347</td>
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</tbody>
</table>

![Graph showing Benefit and Cost over 10 years](image)