

**REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY  
AND  
CASEY ADVISORY GROUP, INC.  
CHAPTER 380 ECONOMIC DEVELOPMENT AND PROJECT PLAN  
IMPLEMENTATION AND LOAN AGREEMENT**

**WHEREAS, CASEY ADVISORY GROUP, INC.**, a Texas corporation (“CASEY”), its permitted successors and assigns, is entering into this Chapter 380 Economic Development and Project Plan Implementation and Loan Agreement (“Agreement”) pursuant to a program initiated by **REINVESTMENT ZONE NUMBER ONE, CITY OF MCKINNEY** (“TIRZ”) pursuant to Section 311.010(h) of the Texas Tax Code and Chapter 380 of the Texas Local Government Code, for the primary purpose of renovating a mixed-use historic structure to enable the relocation of new businesses within the Historic Cotton Mill (“Project”), located wholly within Reinvestment Zone Number One in the City of McKinney, Texas; and

**WHEREAS, CASEY** serves as the general partner of THE COTTON MILL PARTNERS, LTD., a Texas limited partnership (“COTTON MILL”), which is the owner of the Project; and

**WHEREAS,** the TIRZ has agreed to an economic development loan to CASEY based on the timely completion of the Project, including but not limited to the rehabilitation and “shell” finish-out of the structure’s interior, the creation of new jobs within the area comprising the “shell” finish-out, and the construction of private parking lot improvements (“Cotton Mill Improvements”), which Cotton Mill Improvements are necessary to provide for and expand the business of future building tenants in McKinney, Texas; and

**WHEREAS,** the TIRZ has the authority under Section 311.010(h) of the Texas Tax Code and Chapter 380 of the Texas Local Government Code to make loans or grants of TIRZ funds for the purposes of promoting local economic development and stimulating business and commercial activity within the TIRZ; and

**WHEREAS,** the TIRZ has established the Project as an eligible project under the TIRZ Project Plan as required by law and determines that a loan to COTTON MILL of its funds will serve the public purpose of promoting local economic development and enhancing business and commercial activity in the TIRZ and the City of McKinney, Texas; and

**WHEREAS,** the TIRZ has concluded and hereby finds that this Agreement clearly promotes economic development in the TIRZ and, as such, meets the

requisites under Section 311.101(h) of the Texas Tax Code and Chapter 380 of the Texas Local Government Code and further, is in the best interests of the TIRZ and COTTON MILL; and

**WHEREAS,** the City Council has considered and approved this Agreement authorizing the TIRZ' obligations pursuant to applicable law; and

**WHEREAS,** COTTON MILL intervenes and joins in this Agreement in its capacity as owner of the Project and in order to assume and agree to the obligations set forth herein.

**NOW, THEREFORE,** for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the TIRZ, CASEY and COTTON MILL agree as follows:

## **SECTION 1. TERM**

This Agreement shall be effective from the Effective Date until April 1, 2017, unless terminated sooner under the provisions herein.

## **SECTION 2. DEFINITIONS**

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

- a. Agreement. The word "Agreement" means this Chapter 380 Economic Development and Project Plan Implementation and Loan Agreement, together with all exhibits and schedules attached to this Agreement, if any, from time to time.
- b. City. The word "City" means the City of McKinney, Texas. For purposes of this Agreement, City's address is 222 N. Tennessee, McKinney, Texas 75069.
- c. CASEY. The word "CASEY" means Casey Advisory Group, Inc., a Texas corporation, its successors and assigns, which serves as the general partner of COTTON MILL.
- d. COTTON MILL. The words "COTTON MILL" mean The Cotton Mill Partners, Ltd., a Texas limited partnership, including its successors. For purposes of this Agreement, COTTON MILL's address is 610 Elm Street, McKinney, Texas 75069. COTTON MILL is a permitted successor and assignee of the rights and benefits, as well as the attendant liabilities and obligations, of CASEY under this Agreement and the Note.

- e. Cotton Mill Improvements. The words “Cotton Mill Improvements” mean up to or all of 27,000 square feet of improved, “shell” tenant office space and associated corridors/common areas in the Project, as more specifically shown as “Areas Eligible to be Included” on the Cotton Mill Master Plan Update, dated July 31, 2013, attached hereto as Exhibit A; however, specifically excluding Suites 100, 200, 400, 700, 710, 800, 930, 1000, and Building D, and the private parking lot improvements, as generally depicted in the Cotton Mill Parking Lot Expansion Paving and Dimensional Control Plan, dated August 2012, attached hereto as Exhibit B. For purposes of this Agreement, “shell” shall mean improved building areas which have received a complete inspection and certificate of occupancy but which have not been fully finished-out for tenant occupancy.
- f. Loan. The word “Loan” means an advance to CASEY under the terms of this Loan Agreement.
- g. Loan Submittal Package. The words “Loan Submittal Package” mean the documentation required to be supplied to the TIRZ as a condition of receipt of the Loan.
- h. Loan Agreement. The words “Loan Agreement” mean this Chapter 380 Economic Development Program and Loan Agreement, together with all exhibits attached hereto from time to time, if any.
- i. Loan Maturity Date. The words “Loan Maturity Date” mean January 1, 2017.
- j. Project. The word “Project” means a portion of the Historic Cotton Mill, including the Cotton Mill Improvements and the private parking lot improvements, all as specifically shown on the attached Exhibit A and Exhibit B, and which are located at 610 Elm Street, McKinney, Texas 75069.
- k. Prorated Loan Forgiveness. The words “Prorated Loan Forgiveness” mean the partial forgiveness of the Loan based upon a formulaic calculation weighting 50% of the Loan forgiveness on the satisfaction of the improved “shell” tenant office space condition in Section 4.a below and 50% of the Loan forgiveness on the satisfaction of the employment condition in Section 4.e below; then averaging these two (2) components. For example, the completion of 20,000 square feet of improved “shell” tenant office space and the creation of 20 new jobs on the required dates would yield a prorated forgiveness of  $(20,000/27,000 \times \$500,000) + (20/30 \times \$500,000) \div 2 = \$370,370 + \$333,333 \div 2 = \$351,852$ . It is intended that each Prorated Loan Forgiveness amount shall be treated as a third party

contribution to the capital of CASEY, in accordance with the provisions of Section 118 of the Internal Revenue Code of 1986, as amended.

- I. TIRZ. The letters "TIRZ" mean Reinvestment Zone Number One, City of McKinney. For purposes of this Agreement, TIRZ's address is 222 N. Tennessee, McKinney, Texas 75069.

### **SECTION 3. GRANT FUNDING OBLIGATION OF TIRZ**

During the term of this Agreement, TIRZ shall fund a single loan advance of Five Hundred Thousand and No/100 Dollars (\$500,000.00), which loan advance shall be forgiven, either in part and on a prorated basis, or in whole, upon the partial or full satisfaction of the express terms and conditions described in Section 4 below. Upon receipt of the funding of the Loan, CASEY shall immediately transfer the Loan proceeds as a capital contribution to COTTON MILL, for its use in completing the Cotton Mill Improvements. Subject to satisfaction of Section 4.d below, the TIRZ agrees to fund the Loan within thirty (30) days after receipt of CASEY's Loan Submittal Package. Notwithstanding the foregoing, the Loan shall not be funded until the TIRZ has sufficient funds to satisfy the entire Loan. TIRZ shall provide a partial plan set for the parking lot comprised of a 70% design package; however not inclusive of the lighting plans, landscaping plans or irrigation plans.

### **SECTION 4. OBLIGATIONS OF CASEY AND COTTON MILL**

While this Agreement is in effect, COTTON MILL shall comply with the following terms and conditions, as such conditions are described or may apply:

- a. On or before January 1, 2017, COTTON MILL shall separately fund and complete construction of the Cotton Mill Improvements, consisting of up to 27,000 square feet of improved, "shell" tenant office space and associated corridors/common areas in the Project, as more specifically shown on Exhibit A, attached. COTTON MILL shall install all fire suppression and other building and utility infrastructure required under applicable City codes and ordinances for the Project.
- b. Using the Loan advance proceeds received by CASEY and contributed to COTTON MILL, and not later than January 1, 2015, COTTON MILL shall fund and complete the private parking lot area within the Project, as generally depicted on Exhibit B, attached. The minimum private parking lot area requirements shall include a minimum of 150 new or refurbished parking lot spaces; all concrete paving; 26-foot wide fire lanes where required by the City's Fire Code; lighting, landscaping and irrigation features that comply with the City's codes and ordinances; and drainage

and detention features that comply with the City's Storm Water Management Ordinance.

- c. CASEY shall submit a Loan Submittal Package to the TIRZ staff consisting of (i) the City-approved plan set (100% package) and the associated construction permit for the private parking lot improvements and (ii) an executed construction contract for the private parking lot improvements. CASEY and COTTON MILL shall be solely responsible for the cost of the lighting plans, landscaping plans, and irrigation plans.
- d. COTTON MILL shall be in compliance with all applicable City of McKinney codes, state and federal laws, and local ordinances applicable to the Project.
- e. COTTON MILL shall submit verification of the creation and retention, as of January 1, 2017, of not less than thirty (30) new, full-time jobs occupying the completed areas shown on Exhibit A, to the satisfaction of the TIRZ staff.

#### **SECTION 5. EVENTS OF DEFAULT.**

Each of the following shall constitute an event of default under this Agreement:

- a. TIRZ's failure to process the Loan advance for CASEY in accordance with Section 3 of this Agreement.
- b. CASEY'S failure to contribute the Loan proceeds to COTTON MILL for its use in completing the Cotton Mill Improvements.
- c. On or before January 1, 2017, COTTON MILL's failure to receive a "shell" Certificate of Occupancy for improved, "shell" tenant office space and associated corridors/common areas in the Project, as more specifically shown as "Areas Eligible to be Included" on the Cotton Mill Master Plan Update, dated July 31, 2013, attached hereto as Exhibit A; however, specifically excluding Suites 100, 200, 400, 700, 710, 800, 930, 1000, and Building D.
- d. On or before January 1, 2015, COTTON MILL's failure to receive a "green tag" for the private parking lot area, which demonstrates that the City has inspected and approved the completed work of those areas as code-compliant. .
- e. COTTON MILL's default under that Commercial Lease by and between COTTON MILL and the McKinney Economic Development Center for the lease term that commenced on June 1, 2013 and ends on May 31, 2014,

relating to the premises located at The Cotton Mill, 610 Elm Street, Suite 710, McKinney, Texas.

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

In the event of default under Section 5, the non-defaulting party shall give written notice to the other parties of any default, and the defaulting party shall have thirty (30) days to cure said default. In the case of default by CASEY and/or the COTTON MILL, the TIRZ shall have the right to give notice of default under the Note and Loan.

As long as it and COTTON MILL shall not be in default, CASEY shall further have the power to enforce specific performance to collect amounts owing upon TIRZ's default without terminating this Agreement. No action shall lie for punitive damages, and no special or consequential damages shall be recovered by either party. If CASEY and/or COTTON MILL defaults after CASEY's receipt of the Loan advance and such default is not otherwise cured, the Note shall become immediately due, and the TIRZ may seek repayment of the Loan through all legal means, including suit for breach of this Agreement. COTTON MILL hereby specifically agrees to assume and does hereby assume all of the liabilities and obligations of CASEY under this Agreement and the Note notwithstanding the fact that COTTON MILL is not a signatory to the Note.

## **SECTION 7. LOAN FORGIVENESS**

On the Loan Maturity Date, CASEY shall be eligible for Loan forgiveness based on its satisfaction of Section 4 above. The amount of Loan forgiveness shall be determined by the Prorated Loan Forgiveness calculation described in Section 2.j. above. Any amounts not forgiven shall be due and payable on the Loan Maturity Date or sooner in the event of Default by CASEY and/or COTTON MILL. Any Loan forgiveness shall be allocated over three (3) years beginning January 1, 2017 and continuing thereafter until January 1, 2019. TIRZ agrees to execute any Loan extension agreements necessary to effectuate the Loan forgiveness allocation in the preceding sentence. It is specifically agreed and understood that the TIRZ shall have no liability or further obligation to CASEY in the event the U.S. Internal Revenue Service determines any Prorated Loan Forgiveness amount should not be treated as a third party contribution to the capital of CASEY pursuant to Section 118 of the Internal Revenue Code of 1986, as amended.

## SECTION 8. MISCELLANEOUS PROVISIONS

The following miscellaneous provisions are a part of this Agreement:

- a. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all of the parties hereto.
- b. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.
- c. **Binding Obligation Only on Effective Date.** This Agreement shall become a binding obligation on the parties on the Effective Date. TIRZ warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind TIRZ to the same. CASEY and COTTON MILL each warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- d. **No Waiver of Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- e. **Execution of Agreement.** The TIRZ has authorized its Chairman to execute this Agreement on behalf of TIRZ.
- f. **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.
- g. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

- h. **Effective Date.** The effective date of this Agreement (“Effective Date”) shall be the date on which the City Council approves this Agreement. If no approval is obtained by March 31, 2014, this Agreement shall be null and void.
- i. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

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**CASEY ADVISORY GROUP, INC.,**  
*a Texas Corporation*

**THE COTTON MILL PARTNERS, LTD.,**  
*a Texas limited partnership*

**By:** \_\_\_\_\_  
**Name:** TERRANCE CASEY  
**Title:** President  
**Date:** \_\_\_\_\_

**By:** **CASEY ADVISORY GROUP, INC.**  
*its general partner*  
**By:** \_\_\_\_\_  
**Name:** TERRANCE CASEY  
**Title:** President  
**Date:** \_\_\_\_\_

**REINVESTMENT ZONE NUMBER ONE, CITY  
OF MCKINNEY**

**By:** \_\_\_\_\_  
**Name:** DON DAY  
**Title:** Chairman  
**Date:** \_\_\_\_\_

**ATTEST:**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** TIRZ Secretary  
**Date:** \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
MARK S. HOUSER  
Attorney for Reinvestment Zone Number One,  
City of McKinney

PREPARED IN THE OFFICES OF:  
*BROWN & HOFMEISTER, L.L.P.*  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100  
214/747-6111 Fax

Exhibit A

BUILDING AREAS TO BE IMPROVED

Exhibit B  
PARKING LOT