

FIRST AMENDMENT TO
2022 AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This First Amendment to that certain 2022 Amended and Restated Development Agreement (this “First Amendment”) is executed between Trinity Falls Holdings LP, a Delaware limited partnership (the “Owner”) and the City of McKinney, Texas (the “City”) to be effective only upon Owner’s satisfaction of the “MUD Annexation Condition” (defined in Paragraph 1 below, and which date of satisfaction shall be the “Effective Date” as provided thereunder). The Owner and the City are sometimes herein referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

A. WHEREAS, CH-B Trinity Falls, LP and the City entered into that certain 2012 Development Agreement effective December 4, 2012, recorded in the Real Property Records of Collin County on January 16, 2013, as Document Number 20130116000067920 (the “2012 Agreement”) which was subsequently amended by that certain First Amendment to 2012 Development Agreement effective February 27, 2014, recorded in the Real Property Records of Collin County as Document Number 20140227000184320 (the “First Amendment”); and

B. WHEREAS, CH-B Trinity Falls, LP assigned its interest in the 2012 Agreement and the First Amendment to Owner on July 20, 2016; and

C. WHEREAS, Owner and the City entered into that certain Second Amendment to the 2012 Agreement effective November 2, 2016, recorded in the Real Property Records of Collin County on January 17, 2017 as Document Number 20170117000067090 (the “Second Amendment”); and

D. WHEREAS, Owner and the City entered into that certain Third Amendment to the 2012 Agreement effective November 1, 2017, recorded in the Real Property Records of Collin County on October 31, 2017 as Document Number 20171031001447780 (the “Third Amendment”); and

E. WHEREAS, Owner and the City entered into that certain 2022 Amended and Restated Development Agreement effective May 17, 2021, recorded in the Real Property Records of Collin County on November 1, 2022 as Document Number 2022000159696 (the “ARDA”, which together with the 2012 Agreement, the First Amendment, the Second Amendment, the Third Amendment are collectively called the “ARDA” or “Development Agreement”); and

F. WHEREAS, the Parties desire to amend the Development Agreement as reflected in this First Amendment; and

G. WHEREAS, in the event of any conflict or inconsistency between this First Amendment and the Development Agreement, the provisions and intent of this First Amendment shall control; and

H. WHEREAS, except as amended by this First Amendment, the Parties intend that the Development Agreement shall remain in full force and effect; and

I. WHEREAS, terms used in this First Amendment that have their initial letter capitalized but which are not defined in the First Amendment shall have the meanings given to such terms in the Development Agreement.

NOW THEREFORE, for and in consideration for the mutual obligations of the Parties set forth herein, the Parties agree as follows:

1. Owner has agreed with CCD-PW, LLC (“CCD”) to support annexation of that certain 42.5 acre tract of land owned by CCD into MUD 1 as shown on Exhibit A (“CCD Tract”). The definition of “Property” is amended to include that certain 42.5 acre tract now included on Exhibit A and as described by metes and bounds on Exhibits B-2A, B-2B, B-2C, B-2D, B-4A, B-2B, and B-4C. In order to accurately reflect the depiction of the Property to which the Development Agreement applies, a new exhibit entitled “Exhibit A District M.U.D. Map” has been prepared to be substituted for the Exhibit A in the Development Agreement. From and after the effective date of this First Amendment, all references in the Development Agreement to Exhibit A shall mean and refer to the Exhibit A attached hereto, which is incorporated herein for all purposes. Notwithstanding any other provision of this First Amendment, CCD shall have the CCD Tract annexed into the boundaries of M.U.D. No. 1 as an express condition of this Agreement becoming effective (the “MUD Annexation Condition”). Upon written notice and presentment of confirmation evidencing annexation of the CCD Tract into M.U.D. No. 1, this agreement shall be in full force and effect (the “Effective Date”). If Owner fails to satisfy the MUD Annexation Condition, this Agreement shall automatically be null and void, and the ARDA shall continue in full force and effect and without amendment.

2. The Concept Plan attached hereto as Exhibit C-1 through Exhibit C-5 is amended to include the CCD Tract.

3. McKinney ISD Agreement. Section 7.5 is replaced in its entirety with the following:

“7.5 McKinney ISD Agreement. Owner has entered into an agreement (as amended by that certain First Amendment, the “MISD Agreement”) with the McKinney Independent School District (the “MISD”) setting forth the terms and conditions upon which: (i) up to three (3) school sites shall be developed and dedicated to the MISD; and (b) funds contributed to an account (the “Education Fund”) to be held by the Owner’s escrow agent (“Escrow Agent”) will be spent by the Escrow Agent on behalf of the MISD to offset or repay Owner for the acquisition and development costs of such school sites, with the balance donated to the MISD to offset construction costs for school buildings, parking and schoolyard enhancements on such sites. Owner shall cause deed restrictions to be recorded against the Property (but expressly excluding the 270.720 acre Frazier Tract described in deed recorded in Collin County official records under Clerk Number 20171030001439680 which shall encompass Planning Unit 7 and Planning Unit 8 and excluding the 42.5 acre CCD Tract described in Exhibit B-2D which shall encompass Planning Unit 9) prior to the time any lot becomes eligible for homestead status. The deed restrictions shall require that

upon the original sale of each residential lot with improvements thereon (i.e., the sale of such lot with a house or townhouse) within the Property to an End-Buyer, the seller of such lot and improvements shall pay to the Escrow Agent an amount equal to one-half of one percent (0.5%) of the gross sales price of the residential lot and improvements (the “Education Fund Payment”). The deed restrictions shall create a lien upon each residential lot and improvements to secure payment of the Education Fund Payment. The title company or escrow agent handling the closing shall deduct the Education Fund Payment from the amount otherwise due the seller and shall forward the Education Fund Payment directly to the Escrow Agent. Notwithstanding anything in this Section 7.5 to the contrary, the foregoing payment requirements and deed restrictions shall not apply to any sale of a residential lot after the original sale of such lot to an End-Buyer, any non-residential property, or age-restricted residential lots located within the Property, as such developments shall be determined and identified by Owner; provided, however, in the event such lot is sold other than as an age-restricted residential lot, or the owner thereof uses such lot in violation of applicable age restrictions, then the foregoing payment requirements and deed restrictions shall be applicable to such lot at such time and such seller or such owner, as applicable, shall be responsible for such payment.”

4. Default by Non-Affiliated Owner/Sub-Developer. Section 9.3 is replaced in its entirety with the following:

“9.3 Default by Non-Affiliated Owner/Sub-Developer. Notwithstanding the City’s rights under Section 3.2 or any Notice provisions of Section 9.1 to the contrary, in the event of a default by a non-affiliated owner/sub-developer in the construction of subdivision infrastructure within approved plats within Planning Units 1 through 8 (excluding Planning Unit 9), plat approval shall continue so long as Owner or the District provides the City with the following: a) a corrective work plan and cost of cure within 60 days of the default and b) unless the default is cured within 120 days, Owner or the District escrows funds with the City the amount of the cost of cure within 120 days from the date of Owner’s or District’s receipt of notice of default. The continuation of plat application processing and approvals incident to a default in this Section 9.3 does not include a default by Owner or any assignee in obligations for Major Infrastructure (including but not limited to arterials shown on Exhibit C-5 and all collectors), whether constructed by Owner, District or an assignee, and this Section 9.3 shall not limit Owner’s and the District’s obligations for Major Infrastructure and all other obligations of Owner or the District under this Agreement, which defaults shall remain subject to the City’s remedies in Section 9.2 and 9.2.2 above. If the default is timely cured or the escrow is funded pursuant to this Section 9.3, plat applications and approvals within Planning Units 1 through 8 (excluding Planning Unit 9) shall continue within the affected Planning Unit and other Planning Units within Planning Units 1 through 8 (excluding Planning Unit 9); however, until the default is cured, such continuation shall cease on the earlier of one (1) year from the date default or upon the approval of plats containing an aggregate of 350 lots. Owner or District shall have the right, with the City’s approval, to use any escrowed funds to cure the default.”

5. MUD Annexations. Section 12.18.6 is replaced in its entirety with the following:

“12.18.6 MUD Annexations. The City consents to one or more annexations by MUD No. 1 or MUD No. 2, and/or the New MUD of areas that will be served by the Public Infrastructure,

which consent is effective upon the Effective Date of this Agreement regardless of whether the Escrow Agent delivers the CCOL Deed to the City or returns it to Owner. The consent to annexation provided in this subsection is unconditional and irrevocable. The New MUD Consent Agreement will provide that the New MUD will not issue any bonded indebtedness without the City's consent unless the CCOL Deed is returned to Owner, in which case the New MUD may issue bonded indebtedness subject only to the requirements and limitations in the New MUD Consent Agreement. The areas encompassing any annexations by MUD No. 1 or MUD No. 2 shall be entirely within one-half (1/2) mile of the existing boundary of the Property. Upon any annexation into either MUD No. 1 or MUD No. 2, the aggregate number of residential units allowed within the area contained in MUD No. 1, MUD No.2 and the annexed area shall be 5,304 units.

6. Amendment to Development Agreement. Section 12.18.7 is replaced in its entirety with the following:

“12.18.7 Amendment of Development Agreement. Property annexed into the MUDs as provided in Section 12.18.6 will be considered part of the Property for purposes of this Agreement and as such shall be bound by all provisions hereof. All residential lots within any property annexed under Section 12.18.6 shall be incorporated into the then existing master homeowners’ association and receive all attendant benefits as a member thereunder. Upon annexation into the MUDs, this Agreement shall be amended to identify the Public Infrastructure required to be constructed and maintained by the affected MUD.”

7. Exhibit G, Development Regulations, Section 6.e. is replaced in its entirety with the following to include references to new Park Area 8:

e. The Trinity River Common Area will be privately owned (by Owner, the District, or a homeowner association) park and recreation area that will be open at all times to the public. The Trinity River Common Area shall be developed in phases (Area 1 through Area 8) as shown on Exhibits C-4 and C-4A attached hereto and will include improvements from the following list of park components, constructed within Area 1 through Area 8 in phases as described below. All park Areas shall be completed within two (2) years of any required commencement date or event.

Area 8 (new): Commence construction within Area 8 not later than 1 day after the issuance of a building permit for a Dwelling Unit in Planning Unit 9 of the following improvements: (1) nature trails and interpretive trails; (2) 12-foot wide hard surface (concrete) primary hike and bike trails; (3) connectivity to trails systems within the Property; (4) picnic tables; (5) passive open play fields; and (6) optional playground equipment. CCD may request to substitute any component in within this Area, which substitution shall be subject to the approval of the City in its sole discretion.

8. Exhibit G, Development Regulations, Section 11 is replaced in its entirety with the following:

“11. Maximum Single Family Lots. The maximum number of single family lots allowed within the Property shall be 5,304. For purposes of this Paragraph 11,

the “Property” shall mean only MUD No.1, MUD No.2 and any annexed land; and it shall not include the New MUD Land, as such is described in Section 12.18.5 of the Agreement. If, however, pursuant to Section 12.18.2 of the Agreement, the CCOL Deed for the CCOL ROW is returned to Owner, the New MUD Land may be developed in accordance with the Alternative Concept Plan Land Use Plan attached as Exhibit C-1A to the Agreement; whereupon an additional 520 single-family lots may be developed. No more than 2,000 single-family lots with lot widths less than 50 feet may be developed in the Property.”

9. Existing or Prior Claims. The Parties acknowledge that upon execution of this First Amendment there are no events of default under the Development Agreement (as defined in Recitals above) and no facts or circumstances which with the giving of Notice or passage of time would constitute an event of default under the Development Agreement. The City unconditionally and fully releases Owner from any and all claims that the City had or may have against Owner directly or indirectly arising under or related to the Development Agreement. Owner unconditionally and fully releases the City from any and all claims that Owner had or may have against the City directly or indirectly arising under or related to the Development Agreement. The City Secretary of the City is authorized and directed to record a fully executed original of this Agreement in the real property records of Collin County, Texas.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment in multiple copies, each of equal dignity, as of the date first given above.

CITY:

ATTEST:

City of McKinney, Texas

_____, City Secretary

By: _____
Name: Paul G. Grimes
Its: City Manager

Date: _____

APPROVED AS TO FORM:

City Attorney

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2023, by Paul G. Grimes, City Manager of the City of McKinney, Texas, on its behalf.

Notary Public, State of Texas

OWNER:

Trinity Falls Holdings, LP,
a Delaware limited partnership

By: Johnson Trinity Falls GP, LLC,
a Texas limited liability company
Its General Partner

By: _____

Name: _____

Title: _____

Date: _____

STATE OF TEXAS §

§

COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 2023, by _____, _____ of Johnson Trinity Falls GP, LLC, a Texas limited liability company, General Partner of Trinity Falls Holdings, LP, a Delaware limited partnership, on its behalf.

Notary Public, State of Texas

List of Exhibits:

- Exhibit A – District M.U.D. Map
- Exhibit B-2A – Legal Description of 673.759 acres (MUD 1/TRACT A)
- Exhibit B-2B – Legal Description of 206.286 acres (MUD 1/TRACT B)
- Exhibit B-2C – Legal Description of 1.276 acres (MUD 1/TRACT C)
- Exhibit B-2D – Legal Description of 42.5 acres (MUD 1/TRACT D)
- Exhibit B-4A – Legal Description of 423.553 acres (MUD 2/TRACT A)
- Exhibit B-4B – Legal Description of 404.156 acres (MUD 2/TRACT B)
- Exhibit B-4C – Legal Description of 270.720 acres (MUD 2/TRACT C)
- Exhibit C-1 – Concept Plan – Land Use
- Exhibit C-1A – Concept Plan Alternate – Land Use
- Exhibit C-2 – Concept Plan – Planning Units
- Exhibit C-2A – Concept Plan Alternate – Planning Units
- Exhibit C-3 – Concept Plan – Thoroughfare Plan
- Exhibit C-3A – Concept Plan Alternate – Thoroughfare Plan
- Exhibit C-4 Concept Plan – Trinity Falls Park Phasing
- Exhibit C-4A – Concept Plan Alternate – Trinity Falls Park Phasing
- Exhibit C-5 – Concept Plan – Major Infrastructure
- Exhibit C-6B -- Description of Fire Station Service Area
- Exhibit D--Floodplain Exhibit