

**FOURTH AMENDED ECONOMIC DEVELOPMENT PROGRAM
GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P.**

This Fourth Amended Economic Development Program Grant Agreement (this "Fourth Amended Agreement") is made and entered into by and between Allegiance Hillview, L.P., a New York Limited Partnership ("Allegiance"), by and through its assignees, Allegiance GL LLC, a Delaware Limited Liability Company ("Allegiance GL"), and Rayzor Ranch 380 Associates, LLC, a Texas Limited Liability Company ("Rayzor"), along with DB Denton II LLC, a Delaware Limited Liability Company ("DB"), and the City of Denton, Texas, a Texas home-rule municipal corporation (the "City"), for the purposes and considerations stated below. The foregoing parties are sometimes individually referred to as a "Party" and collectively as the "Parties".

WHEREAS, on or about June 15, 2010, the City and Allegiance entered into that certain Economic Development Program Grant Agreement with Allegiance Hillview, L.P. for the development of "Rayzor Ranch" generally located East of IH35W and West of N Bonnie Brae St and on the North and South sides of W University Drive between W Windsor Drive and Scripture Street (the "Development"), which agreement was approved under Ordinance No. 2010-142 and is attached as **Exhibit 1** hereto and incorporated by reference herein (the "Original Agreement"); and

WHEREAS, Allegiance entered into that certain Assignment and Assumption Agreement dated as of July 30, 2010, with DB assigning to DB all of the right, title, interest, and obligations of Allegiance regarding Phase II of the Original Agreement, as amended (the "First Assignment"); and

WHEREAS, on or about September 14, 2010, Allegiance, DB, and the City entered into that certain First Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P. to memorialize the First Assignment and release Allegiance from obligations regarding Phase II, which first amendment was approved under Ordinance No. 2010-210, and is attached as **Exhibit 2** hereto and incorporated by reference herein (the "First Amended Agreement"); and

WHEREAS, on or about May 13, 2014, Allegiance, DB and the City entered into that certain Second Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P. to amend the Original Agreement and First Amended Agreement, which second amendment was approved under Ordinance No. 2014-143 and is attached as **Exhibit 3** hereto and incorporated by reference herein (the "Second Amended Agreement"); and

WHEREAS, Allegiance, through its general partner TH GP LLC d/b/a TH Denton GP LLC, entered into that certain Assignment and Assumption Agreement as of April 1, 2015, with Allegiance GL assigning to Allegiance GL all of the rights, title, interest, and obligations of Allegiance regarding Phase I of the Original Agreement, as amended (the “Second Assignment”); and

WHEREAS, on November 10, 2015, Allegiance, DB, and the City entered into that certain Third Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P. in order to memorialize the Second Assignment and facilitate the development of a Hotel and Convention Center in Phase II of the Development, which third amendment was approved under Ordinance No. 2015-331 and is attached as **Exhibit 4** hereto and incorporated by reference herein (the “Third Amended Agreement”); and

WHEREAS, Allegiance GL entered into that certain Assignment and Assumption Agreement on or about November 1, 2016, with Rayzor through its sole member FidCal, LLC, a Delaware Limited Liability Company, assigning to Rayzor all of the rights, title, interest, and obligations of Allegiance GL regarding Phase I of the Original Agreement, as amended (the “Third Assignment”); and

WHEREAS, the Parties now desire to memorialize the Third Assignment, revise the “Initial Retail Improvements in Phase II” definition of the Third Amended Agreement, extend the substantial completion deadline for the same, and other changes as identified herein.

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Preamble. All matters and recitations stated in the preamble to this Fourth Amended Agreement are true and correct and are hereby incorporated by reference into the provisions of this Fourth Amended Agreement for all purposes.

2. Conflicts. The terms set forth in the Original Agreement, First Amended Agreement, Second Amended Agreement, Third Amended Agreement, (Exhibits 1-4), and this Fourth Amended Agreement are continuing in force and effect to the extent that they do not conflict. In the event of a conflict, the document executed later in time controls. All references in the Original Agreement, First Amended Agreement, Second Amended Agreement, and Third Amended Agreement to a deadline for the construction of the Initial Retail Improvements in Phase II or the Required Infrastructure for the Initial Retail Improvements in Phase II shall be amended to reflect a deadline of April 1, 2018 (subject to extension to July 1, 2018, as provided by this Fourth Amended Agreement).

3. Section 1.b. of the Third Amended Agreement (Section 2 of the Original Agreement which was changed from “Retail Improvements in Phase II” to “Initial Retail Improvements in Phase II” and “Additional Retail Improvements in Phase II” definitions in the Second Amended Agreement) shall be amended to read as follows:

"b. 'Initial Retail Improvements in Phase II means a minimum of 300,000 gross square feet (as measured to the exterior building wall) of retail or commercial shopping center buildings located in Phase II comprised of any combination of the following: (i) the Town Center (as described by the zoning applicable to the Property); (ii) the ground floor of the hotel and the convention center space that is part of or planned to be part of the Hotel and Convention Center Project whether or not the Hotel and Convention Center Project has a certificate of occupancy by April 1, 2018 (subject to extension to July 1, 2018, as provided by this Fourth Amended Agreement); ; and (iii) other retail or commercial shopping center buildings located in Phase II.

At the time of this Fourth Amended Agreement, the City has determined that approximately 227,582 gross square feet (approximately 75% of Initial Retail Improvements in Phase II) of retail or commercial shopping center buildings located in Phase II have received a Certificate of Occupancy or are under construction (applied for and received a permit and began work). If the gross square footage of the Initial Retail Improvements in Phase II does not meet the minimum 300,000 gross square feet by April 1, 2018, DB shall deliver to the City a Certificate of Compliance (including documentation) that establishes the amount of gross square footage which has received a Certificate of Occupancy or has a completed foundation approved by the Building Official as of April 1, 2018. The City Manager or his designee, shall have the authority to administratively approve an extension of this deadline to July 1, 2018, for all purposes of this Fourth Amended Agreement, provided that at least 270,000 gross square feet (approximately 90% of the Initial Retail Improvements in Phase II) of retail or commercial shopping center buildings located in Phase II have received a Certificate of Occupancy or have completed foundations approved by the Building Official by April 1, 2018.

4. Section 2.a. of the Third Amended Agreement (Section 3.2 of the Original Agreement) shall be amended as follows:

3.2 "Program Grant for Phase II. This Agreement shall be effective as of the date executed by both parties. At any time following execution of this Agreement, and following Substantial Completion of the Required Infrastructure for Initial Retail Improvements in Phase II (but not later than April 1, 2018, or as otherwise extended to July 1, 2018, as provided in this Fourth Amended Agreement), DB may designate

the first day of any month to be the Program Effective Date for Phase II by providing written notice to the City at least 60 days prior to the designated Program Effective Date for Phase II. The City will begin making Program Grant for Phase II monthly installment payments on the designated Program Effective Date for Phase II and shall continue to make such monthly installment payments for 300 consecutive months as provided by this Agreement. This Agreement will terminate with respect to the Program Grant for Phase II upon the earlier to occur of (i) the date DB has been paid for the full amount of the Eligible Phase II Costs, or (ii) 300 months after the Program Effective Date for Phase II regardless of whether DB has been paid the full amount of the Eligible Phase II Costs.

Additional Program Grant for Hotel and Convention Center Project, as depicted in Exhibit A. The City will begin making Additional Program Grant for the Hotel and Convention Center Project monthly installment payments commencing the first month following receipt of the certificate of occupancy of the Hotel and Convention Center Project and the following commencement of Phase II Grant Payments, and paid monthly until DB has received \$5,000,000 as consideration for lost revenue in Phase II as a result of the Hotel and Convention Center Project.”

5. Section 4.21 of the Original Agreement shall be amended in its entirety to read as follows:

4.1. Program Grant for Phase I. For each month during the term of the Program Grant for Phase I, the City agrees, subject to the conditions contained in this Agreement, to make a Program Grant for Phase I installment payment to Rayzor ~~Grantee~~ on or before thirty days following the City's receipt from the State Comptroller of the Monthly Sales Tax Report indicating Total Taxable Sales from the businesses located in Phase I. The Program Grant for Phase I installment payments shall be calculated as provided in Section 5.1 of this Agreement. Issuance of the first certificate of occupancy by the City to any tenant within Phase I shall be a condition precedent to the initiation of Program Grant for Phase I installment payments. Program Grant for Phase I installment payments may be withheld at any time if there are delinquent property taxes on any property owned by Rayzor ~~Grantee~~ and located in the City, and such installment payments will not be resumed until such delinquency is cured. Notwithstanding anything contained herein to the contrary, if Substantial Completion of the Retail Improvements in Phase I has not occurred on or before January 1, 2013, the City, in its sole discretion, may cease the Program Grant for Phase I installment payments and terminate this Agreement as to the Program Grant for Phase I, and Rayzor ~~Grantee~~ will refund to the City all Program Grant for Phase I installment payments

previously made. In addition, the City, in its sole discretion, may terminate this Agreement as to the Program Grant for Phase I if Substantial Completion of the Required Infrastructure for Phase I has not occurred on or before January 1, 2013.

6. Section 5.b. of the Second Amended Agreement (Section 4.2 of the Original Agreement) shall be amended in its entirety to read as follows:

"b. Section 4.2 of the Original Agreement is revised in its entirety to read as follows: Program Grant for Phase II. For each month during the term of the Program Grant for Phase II, the City agrees, subject to the conditions contained in this Agreement, to make a Program Grant for Phase II installment payment to DB on or before thirty days following the City's receipt from the State Comptroller of the Monthly Sales Tax Report indicating Total Taxable Sales from the preceding month that are allocable to Phase II. The Program Grant for Phase II installment payments shall be calculated as provided in Section 5.2 of this Agreement. Issuance of the first certificate of occupancy by the City to any tenant within Phase II shall be a condition precedent to the initiation of Program Grant for Phase II installment payments. Program Grant for Phase II installment payments may be temporarily withheld at any time if there are delinquent property taxes or assessments on any property owned by DB and located in the City, and such installment payments will not be resumed until such delinquency is cured, at which time withheld payments shall be paid to DB. The 300 month term for payment of Program Grant for Phase II shall not be suspended or extended if installment payments are withheld pursuant to the prior sentence. Notwithstanding anything contained herein to the contrary, the Program Grant for Phase II installment payments will cease, this Agreement will automatically terminate as to the Program Grant for Phase II, and DB will refund to the City all Program Grant for Phase II installment payments previously made if Substantial Completion of the Initial Retail Improvements in Phase II has not occurred on or before April 1, 2018 (subject to extension to July 1, 2018 as provided by this Fourth Amended Agreement). In addition, the City, in its sole discretion, may terminate this Agreement as to the Program Grant for Phase II if Substantial Completion of the Required Infrastructure for Phase II for the Initial Retail Improvements in Phase II has not occurred on or before April 1, 2018 (subject to extension to July 1, 2018 as provided by this Fourth Amended Agreement)."

7. Section 2.b of the Third Amended Agreement (Section 5.2 of the Original Agreement) is revised in its entirety to read as follows:

5.2. "Program Grant for Phase II. Program Grant for Phase II monthly installment payments during the term of the Program Grant for Phase II shall be calculated as 50% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales allocable to Phase II during the preceding month as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the sales taxes from the Texas State Comptroller and the Monthly Sales Tax Report; provided, however, if the State Comptroller ceases to issue Monthly Sales Tax Reports, the City and the Parties shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for Phase II monthly installment payments. Payments of the Program Grant for Phase II monthly installment payments will be used to repay DB for Eligible Phase II Costs not otherwise paid with Program Grant for Phase I payments up to a maximum of \$21,000,000.00 upon Substantial Completion of the Initial Retail Improvements in Phase II and up to an additional \$27,000,000.00 upon Substantial Completion of the Additional Retail Improvements in Phase II.

Additional Program Grant for Hotel and Convention Center Project. Program Grant for Hotel and Convention Center Project shall be calculated as 15% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales allocable to Phase I and Phase II during the preceding month as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the sales taxes from the Texas State Comptroller and the Monthly Sales Tax Report; provided, however if the State Comptroller ceases to issue Monthly Sales Tax Reports, the Parties shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for the Hotel and Convention Center Project monthly installment payments. Notwithstanding any provision of the Second Assignment or Third Assignment to the contrary, all payments of the Program Grant for the Hotel and Convention Center Project shall be made monthly to DB until DB has received \$5,000,000 as consideration for lost revenue in Phase II as a result of the Hotel and Convention Center Project."

8. Section 6 of the Second Amended Agreement (Section 8 of the Original Agreement) is amended in its entirety to read as follows:

"6. Default. Section 8 of the Original Agreement is revised in its entirety to read as follows: '**Default.** If a Party fails to perform any of its obligations under this Agreement and such failure is not cured within 30 days after written notice, the failure of the non-performing Party to cure within such 30 day period (or to

commence to cure if the nature of the failure cannot reasonably be cured within 30 days) shall constitute a default under this Agreement and shall entitle the non-defaulting party to all remedies available at law or in equity (including injunctive relief, specific performance, and suspending or withholding Program Grant for Phase I or Program Grant for Phase II payments); **PROVIDED, HOWEVER, NOTWITHSTANDING THE FOREGOING: (i) MONETARY DAMAGES SHALL BE LIMITED TO THE AMOUNT NECESSARY TO ENFORCE SPECIFIC PERFORMANCE OF THE FAILED OBLIGATION; (ii) THE CITY CANNOT TERMINATE THIS AGREEMENT AS TO PHASE I ; (iii) THE CITY CANNOT TERMINATE THIS AGREEMENT AS TO PHASE II UNLESS: (1) SUBSTANTIAL COMPLETION OF THE INITIAL RETAIL IMPROVEMENTS IN PHASE II DOES NOT OCCUR ON OR BEFORE APRIL 1, 2018, (SUBJECT TO EXTENSION TO JULY 1, 2018, AS PROVIDED BY THIS FOURTH AMENDED AGREEMENT);, OR (2) SUBSTANTIAL COMPLETION OF THE REQUIRED INFRASTRUCTURE FOR THE INITIAL RETAIL IMPROVEMENTS IN PHASE II DOES NOT OCCUR ON OR BEFORE APRIL 1, 2018, (SUBJECT TO EXTENSION TO JULY 1, 2018, AS PROVIDED BY THIS FOURTH AMENDED AGREEMENT); ; AND (iv) THE CITY MAY NOT TERMINATE, WITHHOLD OR SUSPEND PAYMENTS, OR TAKE ANY OTHER REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE I PAYMENTS OR OTHERWISE RELATED TO PHASE I EXCEPT FOR DEFAULTS RELATED TO PHASE I, AND THE CITY MAY NOT TERMINATE, WITHHOLD OR SUSPEND PAYMENTS, OR TAKE ANY OTHER REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE II PAYMENTS OR OTHERWISE RELATED TO PHASE II EXCEPT FOR DEFAULTS RELATED TO PHASE II."**

9. Section 9 of the Second Amended Agreement is amended in its entirety to read as follows: "Public Improvement District Financing of Eligible Improvements. If the City levies public improvement district assessments to pay any portion of DB's costs of the Eligible Improvements shown on Exhibit A of the Second Amended Agreement, the amount levied and collected from DB shall be reimbursable costs under this Fourth Amended Agreement so long as the total of such assessments and other Eligible Phase II costs do not exceed the maximum amount of \$68,000,000.00 as reflected in Exhibit A of the Second Amended Agreement."

10. Binding Effect. This Fourth Amended Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns. This Fourth Amended Agreement shall not inure to the benefit or give rights or obligations to third party beneficiaries.

11. Counterparts. This Fourth Amended Agreement may be executed in one or more counterpart copies, all of which will constitute and be deemed an original, but all of

which together will constitute one and the same instrument binding on the Parties. Delivery by facsimile or electronic mail of this Fourth Amended Agreement or an executed counterpart hereof will be deemed a good and valid execution and delivery thereof.

12. Authority. Each Party represents that the below individuals have the full authority and capacity to execute this Fourth Amended Agreement on behalf of its respective Party.

EXECUTED and effective as of the ____ day of _____, 2017

CITY

CITY OF DENTON, DENTON, TEXAS
A TEXAS MUNICIPAL CORPORATION

TODD HILEMAN, CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY: _____

ALLEGIANCE GL LLC,
a Delaware Limited Liability Company
(as Assignee from Allegiance Hillview, L.P.)

By: _____
Andrew Osborne, Authorized Signatory

DRAFT

DB DENTON II LLC,
a Delaware Limited Liability Company

By: DB Denton Holdings LLC,
A Delaware Limited Liability Company

Its: Sole Member

By: RED Rayzor Ranch, LLC,
A Delaware Limited Liability

Company

Its: Managing Member

By: _____

Michael Ebert

Its: Vice President and Principal

RAYZOR RANCH 380 ASSOCIATES, LLC,
a Texas Limited Liability Company
(as Assignee from Allegiance GL LLC)

By: FidCal, LLC,
A Delaware Limited Liability Company
Its Sole Member

By: FRP FidCal, LLC
A Texas Limited Liability Company
it's Manager

By: _____
Richard Coe
it's: Executive Vice President

STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2017 by Todd Hileman, City Manager, **City of Denton, Texas**, on behalf of said city.

Notary Public, in and for the State of Texas

My Commission expires: _____

DRAFT

STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2017 by _____, of **Allegiance GL LLC**, its _____ on behalf of said entity.

Notary Public, in and for the State of Texas

My Commission expires: _____

DRAFT

STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2017 by _____, of **DB Denton II LLC**, its _____ on behalf of said entity.

Notary Public, in and for the State of Texas

My Commission expires: _____

DRAFT

STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2017 by _____, of **Rayzor Ranch 380 Associates, LLC**, it's _____ on behalf of said entity.

Notary Public, in and for the State of Texas

My Commission expires: _____