

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (hereinafter “Agreement”) is made by and between The City of Lawrence, Kansas, a municipal corporation duly organized and existing under the laws of the State of Kansas (hereinafter “the City”) and Thomas Fritzel, Oread Inn, L.C., Oread Wholesale, L.C., and DFC Company of Lawrence, L.C.. (collectively “the Defendants”) and their respective employees, representatives, agents, affiliated, associated, or related companies, successors, and assigns. The City and the Defendants may collectively be referred to as the “Parties” herein. This Agreement shall be effective upon the last date, written below, upon which the last party hereto executes this Agreement (hereinafter “Effective Date”).

WHEREAS a dispute has arisen between the City and the Defendants in connection with the 12th & Oread Tax Increment Financing District Redevelopment Agreement, dated April 8, 2008 (hereinafter the “Redevelopment Agreement”) related to certain sales tax reimbursements made by the City to the Defendants under the Redevelopment Agreement (hereinafter the “Dispute”);

WHEREAS the City filed a Petition for Damages in the District Court of Douglas County, Kansas, styled “*City of Lawrence, Kansas, v. Thomas Fritzel, Oread Inn, LC, Oread Wholesale, LC, DFC Company of Lawrence, LC and John Doe 1-12*” Case No. 2016 CV 000462 which Defendants subsequently removed to the United States District Court of Kansas, Case No. 16-cv-02800 (hereinafter the “Lawsuit”) wherein the City alleged, *inter alia*, that the Defendants improperly received certain sales tax reimbursements from the City;

WHEREAS, the City and the Defendants have reached an accord and now wish to resolve, compromise and settle the Lawsuit in accordance with the terms of this Agreement; and

WHEREAS, it is the desire of the parties hereto to resolve forever any and all disputes and to end any and all controversies and claims, except those specifically identified herein, related to the Lawsuit and the Dispute.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, representations, agreements, and payment set forth hereinafter, and for and in consideration of the commitments involved herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the Parties agree as follows:

**1. Settlement.**

**a. Payment.** The Defendants shall pay to the City the total amount of Six Hundred Fifty Thousand Dollars and No Cents (\$650,000.00). The City shall disburse that amount to itself first from the Four Hundred Ninety Two Thousand

Nine Hundred and Fourteen Dollars and Eighty Six Cents (\$492,914.86) tendered to it by Oread Inn under protest on December 31, 2015, together with any interest accruing thereon, and second from the 12th & Oread TIF and TDD Funds that it currently holds. The sum paid to the City in settlement hereunder shall not count toward the monetary caps or amounts identified in Section 3.02 of the Redevelopment Agreement, as amended.

After disbursing the sum of Six Hundred Fifty Thousand Dollars and No Cents (\$650,000.00) to itself from monies that it currently holds, as delineated above, the City agrees to disburse the remaining 12th Oread TIF and TDD funds in a manner to be agreed upon by the Parties. This amount shall count toward the monetary caps or amounts identified in Section 3.02 of the Redevelopment Agreement, as amended.

**b. Amendment of Redevelopment Agreement.** By way of Amendment, the Parties agree to reform the Redevelopment Agreement which shall be signed by Oread Inn and the City within ten (10) days of execution of this Agreement. The terms of the Amendment are set forth in the proposed First Amendment to the 12<sup>th</sup> and Oread Tax Increment Financing District Redevelopment Agreement which is attached hereto as Exhibit A and incorporated by reference.

**c. Resignation.** Thomas Fritzel will resign as co-manager of Oread Inn, L.C., and a copy of said resignation will be delivered to the City.

**d. Management of Oread Inn, L.C.**

**(i) Co-Managers/Developer's Representative.** During the term that the City is obligated to make reimbursements to Oread Inn, L.C. under the Redevelopment Agreement, as amended, and in accordance with Oread Inn's operating agreement:

**(A)** two persons -- upon whom Oread Inn and the City Manager shall mutually agree -- shall be appointed to serve as co-managers of Oread Inn. One of the co-managers shall serve as the Developer's Representative as contemplated by Section 1.02 of the Redevelopment Agreement, as amended;

**(B)** Oread Inn shall not replace either co-manager of Oread Inn without the prior written consent of the City Manager. If Oread Inn and the City Manager cannot agree as to whom should be appointed co-manager of Oread Inn, Oread Inn and the City agree to enter into good faith mediation to resolve the impasse.

(C) Thomas Fritzel shall not serve as co-manager of Oread Inn nor as the Developer's Representative as contemplated by Section 1.02 of the Redevelopment Agreement, as amended.

(ii) **Operating Agreement of Oread Inn.** During the term that the City is obligated to make reimbursements to Oread Inn under the Redevelopment Agreement, as amended, Oread Inn shall not amend nor make any changes to the governance provisions of its operating agreement without the prior written consent of the City Manager, which consent shall not unreasonably be withheld. The City acknowledges that Oread Inn has previously delivered to it a copy of its governance provisions.

(iii) **Training.** Managers of Oread Inn and the Oread Hotel will participate in training regarding the sourcing of sales tax.

**e. Oread Wholesale.**

(i) During the term that the City is obligated to make reimbursements to Oread Inn under the Redevelopment Agreement, as amended, Oread Wholesale shall not be located within the Redevelopment District as identified by the Redevelopment Agreement, as amended.

(ii) Oread Wholesale will cease all operations within the Redevelopment District and will relocate outside the Redevelopment District.

(iii) Without the prior written consent of the City Manager, Oread Wholesale shall not file with the Kansas Department of Revenue any amended sales tax returns for any period of time preceding the Effective Date of this Agreement.

**f. Incentives.** Thomas Fritzel agrees that, for a period of five (5) years, commencing on the Effective Date of this Agreement, neither he nor any Fritzel Affiliate will seek, apply for, or participate, in any way, in any request, application, or development project that would involve sales tax reimbursements from the City. Fritzel Affiliate means any business, corporation, limited liability company, partnership, or other entity in which Thomas Fritzel or his wife is an owner, manager, member, shareholder, partner, investor, or in which he or his wife has any other type of ownership or management interest.

**2. Mediator's Fee.** The mediator's fee has or will be paid solely by Defendants.

3. **Dismissal.** Upon execution of this Agreement and the First Amendment to the 12<sup>th</sup> and Oread Tax Increment Financing District Redevelopment Agreement and the fulfillment of all conditions precedent thereto, the City shall file a Fed.R.Civ.P. 41(a)(1)(A)(ii) dismissal of the Lawsuit with prejudice.

4. **Mutual Release.** The City does hereby release and forever discharge the Defendants and their parent entities, subsidiaries, affiliates, shareholders, partners, successor and predecessor corporations, officers, directors, agents, attorneys, employees, and assigns, and all other persons, firms and/or entities, whether named herein or not, from the Lawsuit and from, except to the extent noted below, any and all liability, claims, loss, actions, liens, causes of action, demands, rights, damages, costs, loss of services, expenses or compensation whatsoever, whether asserted or not asserted, known or unknown, arising out of the Dispute, as alleged by the City in the Lawsuit.

The City expressly and specifically reserves and does not waive or release under the terms of this Agreement any claims the City may have, dating from 2015 through the Effective Date of this Agreement, that are currently unquantified, relating to any sales tax credits that may have been granted as the result of amendments to sales tax returns within the Redevelopment District.

The Defendants do hereby release and forever discharge the City and its agents, attorneys, elected officials, officers, directors, employees, and assigns, and all other persons, firms and/or entities, whether named herein or not, from the Lawsuit and from any and all liability, claims, loss, actions, liens, causes of action, demands, rights, damages, costs, loss of services, expenses or compensation whatsoever, whether asserted or not asserted arising out of or which in the future might arise out of any matter or claim arising out of the Dispute, alleged in the Lawsuit or that could have or should have been asserted in the Lawsuit.

5. **Resolution of Claims.** This Agreement finally settles and resolves all claims, except for those claims expressly and specifically reserved above, that were asserted, or could have been asserted by the City against the Defendants and/or any other person or entity referred to in this Agreement and arising out of the Dispute or the Lawsuit. The same is true for any claims that Defendants could have asserted against the City arising out of the Dispute or the Lawsuit. The Parties agree that all breaches of the Agreement, as alleged in the Lawsuit are cured.

6. **Public Statement.** Thomas Fritzel agrees that he will not make any public statement about the Lawsuit, or the settlement and compromise thereof, except that he shall make the following statements:

- a. “We are pleased that the lawsuit has been resolved”; and

b. “Oread Inn and the other Defendants are pleased to have resolved the dispute with the City regarding the Redevelopment Agreement. The City Commissioners have exhibited a strong desire to protect the public interest and, in the Lawsuit, have forcefully made their case in connection with the Redevelopment Agreement. The Oread Inn and any related entities in the special taxing districts have agreed to allow annual sales tax audits. In addition, the Defendants will pay to the City \$650,000.00, will pay (or have paid) the mediation costs, and will reimburse the City for the filing fees of the Lawsuit. Further, managers of Oread Inn will participate in sales tax sourcing training.”

**7. Advice of Counsel.** The Parties agree that they have consulted with their own legal counsel regarding the advisability of settlement and the terms of this Agreement, and they represent and warrant that they have read the terms of this Agreement and understand it is binding. The Parties acknowledge that they fully understand this Agreement and that they have addressed all questions or concerns regarding the meaning or effect of any provision to their independent counsel.

**8. Interpretation and Venue.** The Parties agree that this Agreement shall be interpreted and construed pursuant to the law of the State of Kansas.

**9. Entire Agreement.** The Parties represent that no promise, inducement, or agreement has been made or offered to them to obtain this Agreement, other than those expressed herein. This Agreement represents the entire and integrated agreement between the City and the Defendants and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral.

**10. Voluntary Execution.** The Parties acknowledge that they have read and fully understand the terms of this Agreement and that they voluntarily execute the same for the purpose of settlement of this matter.

**11. Modification and Waiver.** No modification or waiver of any provision of this Agreement nor consent to any departure therefrom, shall in any event be effective, unless the same shall be in writing and signed by the party to be charged therewith and then such modification, waiver, or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

**12. Construction.** This Agreement has been arrived at after bargaining and negotiations by the Parties. The language of this Agreement is a product of the mutual effort of the Parties. This Agreement shall be construed fairly to all Parties; it shall not be construed against any party on the basis or the extent to which that party participated in preparing it.

**13. Additional Documents.** The Parties agree to execute any additional documents that may be necessary to fulfill the terms of this Agreement.

**14. Facsimile/Electronic Signatures.** The Parties agree that this Agreement may be executed by facsimile or electronic signatures which shall be deemed to have the same force and effect as an original signature.

**15. Counterparts.** This Agreement may be executed in separate counterparts by the Parties, which counterparts taken together shall constitute a single and complete binding agreement.

**16. Attorneys' Fees and Costs.** The Parties agree that in the event any party should commence legal proceedings to enforce or interpret any of the terms of this Agreement, each party will be responsible for their own attorneys' fees and expenses.

**17. Severability.** The Parties agree that should any portion of this Agreement be deemed to be void as a matter of law or public policy, the remaining provisions shall remain in full force and effect.

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