

STATE OF TEXAS §
 § **TAX ABATEMENT AGREEMENT**
COUNTY OF COLLIN §

This Tax Abatement Agreement (the “Agreement”) is entered into by and among the County of Collin County, Texas (the “County”), and One Bethany Development Partners LP, a Texas limited partnership (the “Owner”) (each a “Party” or collectively the “Parties”), acting by and through their authorized representatives.

W I T N E S S E T H:

WHEREAS, the City Council of the City of Allen, Texas (the “City Council”), passed an Ordinance (the “Ordinance”) establishing Tax Abatement Reinvestment Zone No. 32 (the “Zone”), for commercial/industrial tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the “Tax Code”); and

WHEREAS, the County has adopted guidelines for tax abatement (the “Tax Abatement Guidelines”); and

WHEREAS, the Tax Abatement Guidelines contain appropriate guidelines and criteria governing tax abatement agreements to be entered into by the County as contemplated by the Tax Code; and

WHEREAS, the County has adopted an order or resolution stating that the County elects to be eligible to participate in tax abatement; and

WHEREAS, in order to maintain and enhance the commercial and industrial economic and employment base of the Allen area, it is in the best interests of the taxpayers for the County to enter into this Agreement in accordance with said Ordinance, the Tax Abatement Guidelines, and the Tax Code; and

WHEREAS, Owner owns or is under contract to purchase the real property described in Exhibit “A” (“Land”), and intends to construct, or cause to be constructed, the Improvements (hereinafter defined) on the Land; and

WHEREAS, the Commissioners Court for the County each finds that the contemplated use of the Premises (hereinafter defined), and the contemplated Improvements are consistent with encouraging development of the Zone in accordance with the purposes for its creation and/or in compliance with the Tax Abatement Guidelines, the Ordinance adopted by the City, the Tax Code, and all other applicable laws; and

WHEREAS, the Commissioners Court for the County finds that the Improvements sought are feasible and practicable and would be of benefit to the Premises to be included in the Zone and to the County after expiration of this Agreement; and

WHEREAS, a copy of this Agreement has been furnished, in the manner prescribed by the Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Premises is located;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of primary employment, the attraction of major investment in the Zone, which contributes to the economic development of the County and the enhancement of the tax base in the County, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of a Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Base Year Taxable Value” shall mean the Taxable Value for the Land for the year in which this Agreement is executed (2016).

“City” shall mean the City of Allen, Texas acting by and through its city manager, or designee.

“City Tax Abatement Agreement” shall mean that certain tax abatement agreement by and between the City and Owner relating to the Improvements.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof and permits with respect thereto required by applicable governmental authorities have been obtained for construction of the Improvements; (ii) all necessary permits for the construction of the Improvements on the Land pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Improvements has commenced.

“Completion of Construction” shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued by the City for Improvements.

“County” shall mean County of Collin County, Texas.

“Effective Date” shall mean the last date of execution of this Agreement.

“Expiration Date” shall mean March 1 of the calendar year following the tenth (10th) anniversary date of the First Year of Abatement.

“First Year of Abatement” shall mean the calendar year commencing with January 1 of the calendar year immediately following the date of Completion of Construction.

“Force Majeure” shall mean (i) acts of war or terrorism, (ii) fire or other similar casualty or unusual and extraordinary occurrence, (iii) explosion, (iv) riot or civil commotion or acts of public enemy, (v) judicial or administrative writ, order or decree, (vi) legislative decisions or actions of, or delays by, applicable local, state or Federal governments, including delays by the City or County, but only to the extent such delays occur notwithstanding that Owner and its contractors and consultants have provided timely responses to all requests and inquiries of the City and County arising during the zoning and platting processes, (vii) strikes, lockouts or labor difficulty (including jurisdictional union labor disputes), (viii) casualty at the job site or resulting in direct physical damage to the Improvements or occurring off-site but only if directly disrupting or delaying the supply chain of labor or materials to the Improvements, (ix) moratoria on the issuance of permits or other governmental approvals affecting construction projects generally in the Dallas-Fort Worth-Arlington Metropolitan Statistical Area, and/or (x) inclement weather of sufficient severity as to reasonably cause a delay in performance of the obligation to be performed.

“Improvements” shall mean an office building containing not less than 125,000 square feet of gross building area and approximately 114,000 square feet of net rentable area of office space in not less than five (5) stories constructed on the Land more fully described in the submittals filed by Owner with City from time to time in order to obtain one or more building permits for construction of the Improvements, provided, however, that “Improvements” shall not include the Land.

“Land” means the real property described in **Exhibit “A”**.

“Owner” shall mean One Bethany Development Partners LP, a Texas limited partnership.

“Premises” shall collectively mean the Improvements and the Land.

“Related Agreement” shall mean any agreement, other than this Agreement, by and between the County and the Owner, its parent company, and any affiliated or related entity controlled or owned by Owner, or its parent company.

“Taxable Value” means the appraised value as certified by the Appraisal District as of January 1 of a given year.

Article II General Provisions

2.1 Owner is the owner of the Land, or is under contract to purchase the Land, which Land is located within the city limits of the City and within the Zone. Owner intends to construct, or cause to be constructed, the Improvements on the Land.

2.2 The Premises are not in an improvement project financed by tax increment bonds.

2.3 This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City.

2.4 The Premises are not owned or leased by any member of the Allen City Council or any member of the Allen Planning and Zoning Commission, or the Commissioners Court of the County.

2.5 Owner shall, before May 1, of each calendar year that the Agreement is in effect, certify in writing to the County that Owner is in compliance with each term of the Agreement.

2.6 The Premises at all times shall be used in the manner (i) that is consistent with the City's Comprehensive Zoning Ordinance, as amended, and (ii) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone.

Article III Tax Abatement Authorized

3.1 This Agreement is authorized by the Tax Code and in accordance with the County Tax Abatement Guidelines, and approved by order of the County Commissioners Court.

3.2 Subject to the terms and conditions of this Agreement, and provided the Taxable Value of the Improvements is at least Twenty-Five Million Dollars (\$25,000,000.00) as of the First year of Abatement and as of January 1 of each calendar year thereafter during the term of this Agreement, County hereby grants Owner an abatement of fifty percent (50%) of the Taxable Value of the Improvements for a period of ten (10) consecutive years beginning with the First Year of Abatement. The actual percentage of Taxable Value of the Improvements subject to abatement for each year this Agreement is in effect will apply only to the portion of the Taxable Value of the Improvements that exceeds the Base Year Taxable Value.

3.3 The period of tax abatement herein authorized shall be for a period of ten (10) consecutive years beginning the First Year of Abatement.

3.4 During the period of tax abatement herein authorized, Owner shall be subject to all taxation not abated, including but not limited to, sales tax and ad valorem taxation on the Land.

3.5 The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article IV Improvements

4.1 Owner owns or is under contract to purchase the Land and intends to construct or cause to be constructed thereon the Improvements. Nothing in this Agreement shall obligate Owner to construct the Improvements on the Land, but said actions are conditions precedent to tax abatement for such Parties pursuant to this Agreement.

4.2 As a condition precedent to the initiation of the Owner's tax abatement pursuant to this Agreement, Owner agrees, subject to events of Force Majeure, to cause Commencement of Construction of the Improvements to occur on or before November 30, 2016, and subject to events of Force Majeure to cause Completion of Construction of the Improvements to occur within eighteen (18) months thereafter, as good and valuable consideration for this Agreement, and that all construction of the Improvements will be in accordance with all applicable state and local laws, codes, and regulations (or valid waiver thereof).

4.3 Construction plans for the Improvements constructed on the Land will be filed with the City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

4.4 Owner agrees to maintain the Improvements during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.

4.5 The County, its agents and employees shall have the right of access to the Premises during and following construction to inspect the Improvements at reasonable times and with reasonable notice to Owner, and in accordance with visitor access and security policies of the Owner and subject to the rights of tenants pursuant to their respective leases, in order to insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

Article V Default: Recapture of Tax Revenue

5.1 In the event the Owner: (i) fails to construct the Improvements in accordance with this Agreement; (ii) has delinquent ad valorem or sales taxes owed to the City (provided Owner retains its right to timely and properly protest such taxes or assessment); (iii) suffers an event of "Bankruptcy or Insolvency"; or (iv) breaches any of the terms and conditions of this Agreement or a Related Agreement, then Owner after the expiration of the notice and cure periods described below, shall be in default of this Agreement. As liquidated damages in the event of such default, the Owner shall, within thirty (30) days after demand, pay to the City all taxes which otherwise would have been paid by the Owner to the City without benefit of a tax abatement, for the property the subject of this Agreement at the statutory rate for delinquent taxes as determined by Section 33.01

of the Tax Code, as amended, but without penalty. The Parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The Parties further agree that any abated tax, including interest, as a result of this Agreement, shall be recoverable against the Owner, its successors and permitted assigns and shall constitute a tax lien against the Premises, and shall become due, owing and shall be paid to the City within thirty (30) days after notice of termination.

5.2 Upon breach by Owner of any of the obligations under this Agreement, the County shall notify Owner in writing, which shall have thirty (30) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within such 30-day period, and Owner has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the County may extend the period in which the default must be cured.

5.3 If Owner fails to cure the default within the time provided as specified above or, as such time period may be extended, the County, at its sole option, shall have the right to terminate this Agreement by providing written notice to Owner.

5.4 Upon termination of this Agreement by County, all tax abated as a result of this Agreement, shall become a debt to the County as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is provided. The County shall have all remedies for the collection of the abated tax provided generally in the Tax Code for the collection of delinquent property tax. The County at its sole discretion has the option to provide a repayment schedule. The computation of the abated tax for the purposes of the Agreement shall be based upon the full Taxable Value of the Improvements without tax abatement for the years in which tax abatement hereunder was received by Owner, as determined by the Appraisal District, multiplied by the tax rate of the years in question, as calculated by the County Tax Assessor-Collector. The liquidated damages shall incur penalties as provided for delinquent taxes and shall commence to accrue after expiration of the thirty (30) day payment period.

Article VI
Annual Application for Tax Exemption

It shall be the responsibility of the Owner, pursuant to the Tax Code, to file an annual exemption application form for the Improvements with the Chief Appraiser for the Appraisal District (or its successor) in which the eligible taxable property has situs. A copy of the exemption application shall be submitted to the County upon request.

Article VII
Annual Rendition

The Owner shall annually render the value of the Improvements to the Appraisal District, and shall provide a copy of the same to the County upon written request.

Article VIII
Miscellaneous

8.1 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received upon the earlier to occur of (a) actual receipt or (b) three (3) days thereafter if sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below, or such other address as is designated by the applicable Party from time to time, or on the day actually received if sent by courier or otherwise hand delivered:

If intended for County, to:

Judge Keith Self
Collin County Administration Building
Suite 4192
2300 Bloomsdale Road
McKinney, Texas 75071

If intended for Owner, to:

One Bethany Development Partners LP
Attn: Kaizen Development Partners, LLC
2602 McKinney Avenue, Suite 240
Dallas, Texas 75204

8.2 Authorization. This Agreement was authorized by order of the Commissioners Court authorizing the County Judge to execute this Agreement on behalf of the County.

8.3 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

8.4 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

8.6 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

8.7 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

8.8 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

8.9 Assignment. The terms and conditions of this Agreement are binding upon the successors and assigns of Owner. This Agreement cannot be assigned by Owner unless written permission is first granted by the County, which permission shall be at the reasonable discretion of the County, provided, however the Owner may collaterally assign or pledge Owner's rights under this Agreement to nay lender of the Owner as security for a loan for the Premises.

8.10 Employment of Undocumented Workers. During the term of this Agreement, the Owner agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Owner shall repay the taxes abated herein, and any other funds received by the Owner from the County as of the date of such violation within 120 days after the date the Owner is notified by the County of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Owner is not liable for a violation of this section by a subsidiary, affiliate, tenant or franchisee of the Owner or by a person with whom such Owner contracts.

8.11 Right of Offset. The County may at its option, offset any amounts due and payable under this Agreement to the County against any debt (including taxes) lawfully due to the County, as the case may be, from the Owner, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due the County has been reduced to judgment by a court.

8.12 Condition Precedent. This Agreement is expressly subject to and conditioned on the following conditions which are conditions precedent to the obligations of the Parties: (i) Owner closing its purchase of the Land on or before _____, 2016; and (ii) Owner and City entering into the City Tax Abatement Agreement.

[Signature page to follow]

EXECUTED in duplicate originals the ____ day of _____, 2016.

COLLIN COUNTY, TEXAS

By: _____
Honorable Keith Self, County Judge

EXECUTED in duplicate originals the ____ day of _____, 2016.

**ONE BETHANY DEVELOPMENT PARTNERS LP,
a Texas limited partnership**

By: One Bethany Development Partners GP,
LLC,
a Texas limited liability company,
Its General Partner

By: Kaizen Development Partners, LLC,
a Texas limited liability company,
Its Manager

By: _____
Lee A. White, Manager

**EXHIBIT “A”
Description of Land**

(to be attached)