

Community Reinvestment Area Abatement Agreement

This Community Reinvestment Area Abatement Agreement (the “Agreement”) is made and entered between the City of Trotwood, Ohio, a municipal corporation existing under the laws of the State of Ohio, with its offices at 3035 Olive Road, Trotwood, Ohio 45426 (the “City”), and TPN Golf Properties, LLC (the “Company”), with its principal office at 1 Club Drive, Clayton, Ohio, 45315, both collectively referred to herein as the “Parties” and sets forth the complete understanding of the Parties as to the exemption of real property taxes on improvements made to the Property, defined below, pursuant to the City’s Community Reinvestment Area exemption program and Ohio Revised Code (“ORC”) § 3735.65 *et seq.* (the “CRA Exemption”).

WHEREAS, the City has encouraged the development of real property and the acquisition of personal property located in the area designated as a Community Reinvestment Area (“CRA”); and

WHEREAS, the Company desires to construct a new golf clubhouse, which will provide golf services, food and beverage services, restrooms, and a venue for banquets and weddings, within the boundaries of the CRA located at 1 Club Drive, Clayton, Ohio, 45315, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the Company desires to provide golf course improvements, which are to include maintenance barn renovation, drainage, irrigation repair and replacement, pond expansion, and bunker renovation, within the boundaries of the CRA located at 1 Club Drive, Clayton, Ohio, 45315, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the City having the appropriate authority for the stated type of project desires to provide the Company with incentives available for the development of the Project in the CRA; and

WHEREAS, the Company has submitted proposed agreement application (attached hereto as Exhibit "One" and incorporated herein by this reference) to the City (the “Application”); and

WHEREAS, the City has investigated the application of the Company and has recommended the same to the City Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunity in the CRA and improve the economic climate of the City; and

WHEREAS, the Project is located within the boundaries of the Trotwood-Madison City School District and the Miami Valley Career Technology Center (collectively the “School District”), and the board of education of each such district has been notified of the proposed approval of this Agreement in accordance with ORC § 3735.671 and § 5709.83, or has waived such notice, and has been given a copy of the Application; and

WHEREAS, pursuant to ORC § 3735.67(A) and in conformance with the format required under ORC § 3735.671, the Parties desire to set forth their agreement in writing with respect to matters hereinafter contained; and

WHEREAS, the City Council, by Resolution R22-39 adopted August 5, 2022, has approved the terms of this Agreement and authorized its execution on behalf of the City.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the Parties from the execution hereof, the Parties herein agree as follows:

1. Project Description. The proposed construction of a new golf clubhouse and golf course renovations will be located at 1 Club Drive, Clayton, Ohio, 45315 (the “Property”). Upon completion of the construction, the new golf clubhouse will offer a banquet and wedding venue, food and beverage services, golf services, and restrooms (the “Project”). The Project will also involve renovations to the golf course, to include, course improvements, maintenance barn renovation, irrigation repair and replacement, improved drainage, pond expansion, and bunker renovation.

The Project is scheduled to commence on May 1, 2022 (the “Commencement Date”) and be completed on or about December 31, 2022 (the “Completion Date”), provided a tax exemption is provided.

2. Employment Positions and Total Annual Payroll. Between 5-10 permanent full-time jobs will be created related to the golf course and clubhouse operations. Further, between 15-30 permanent part-time jobs will be created depending on the scheduling of wedding and banquet events (“New Jobs”). Pursuant to Ohio Revised Code § 3735.671(B)(4) and (5), the estimated amount of annual payroll such New Jobs will add is \$300,000.00.

3. CRA Exemption. The City hereby grants the Company a real property tax exemption pursuant to R.C. Section 3735.67 equal to a percentage of the assessed valuation of the Property exempted hereunder, for the improvements made under the Project, for the following period and for the following benefit level (the “Exemption”):

Exemption Period
Fifteen (15) Years

Exemption Benefit Level
Fifty Percent (50%)

The exemption provided under this § 3 commences the first year for which the Property would first be taxable were that property not exempted from taxation under this Agreement. No CRA exemption hereunder shall commence after tax year 2023, nor extend beyond tax year 2038. The tax exemption granted pursuant to this § 3 is prospective in nature only and shall not act to exempt delinquent taxes owed prior to the Project Commencement Date. The Company agrees and consents to the City preparing and filing all necessary applications and supporting documents to obtain the exemption authorized by the CRA Exemption Statutes and the City. The City shall perform such acts as are reasonably or legally necessary or appropriate to effect, claim, reserve, and maintain the CRA Exemption granted under this Agreement, including, without limitation,

joining in the execution of all documentation and providing any necessary certificates required in connection with such exemption.

4. Taxes Otherwise Due. The Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. As set forth in § 3 of this Agreement, the exemption provided pursuant to this Agreement is prospective in nature only and does not serve to exempt or waive any taxes owed prior to the Project Commencement Date. Company affirms and acknowledges it has entered into a fifty-nine (59) month Payment Plan with the Montgomery County Auditor dated September 1, 2020. Company shall provide proof of continuing compliance with the Payment Plan every six (6) months from the date this Agreement is signed by the City. If the Company fails to pay taxes not exempted pursuant to the Payment Plan exemptions under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

5. CRA Exemption Continues. If, for any reason, the CRA designation expires, or the Director of the State of Ohio revokes his or her confirmation of the area, or the City revokes the designation of the area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the CRA Exemption pursuant to this Agreement.

6. Certifications. Pursuant to ORC § 3735.671(C)(3), the Company hereby certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe any delinquent taxes for which the Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the ORC, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, *et seq.*, or such a petition has been filed against the Company. For the purposes of Section 6 of this Agreement, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the ORC chapter governing payment of those taxes.

7. Failure to Comply. If the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification under Section 6, above, is fraudulent, the City may terminate or modify the CRA Exemption under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the Property not been exempted from taxation under this Agreement. Repayment of taxes under this Section may be secured by the City by a lien placed on the Property in the amount required to be repaid hereunder, and such lien shall attach, and may be perfected, collected and enforced in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as such.

8. Discontinuing Operations. If the Company discontinues operations at the Property prior to the expiration of the term of this Agreement, the Company and any successor or any related member shall not enter into an agreement under ORC § 3735.671, 5709.62, 5709.63 or 5709.632 within five (5) years after such discontinuation. The CRA Exemption granted under this

Agreement shall be revoked if it is determined that the Company, any successor to that person, or any related member has violated the prohibition against entering into this Agreement under ORC § 3735.671(E) 5709.62 or 5709.63 prior to the time prescribed by that division of either of those sections. For purposes of this Section, “successor” and “related member” have meanings as defined in ORC § 3735.671(E).

9. Non-Discriminatory Hiring Practices. As required under ORC § 5709.85(D), and by executing this Agreement, the Company is hereby committing to offer equal opportunity and equal consideration to all persons who seek employment with the Company, that no individual will be discriminated against on the basis of race, color, ancestry, religion, creed, national origin, age, sex, veteran status, disability, and/or any other characteristic protected by applicable federal, State or local law.

10. Agreement Not Transferrable. This Agreement is not transferrable or assignable without the express, written approval of the City, which such approval shall not be unreasonably withheld.

11. Non-Waiver. No failure by the City to enforce its rights or seek its remedies under this Agreement upon any non-compliance or default by the Company shall affect or constitute a waiver of the City’s rights to enforce that right or seek that remedy.

12. Miscellaneous.

(a) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by a recognized, overnight delivery service or be certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to our counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, Notices shall be addressed to:

If to City:	City of Trotwood Community Improvement Corporation Attn: Chad Downing, Executive Director 3035 Olive Road, Trotwood, OH 45426
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If to Company:	TPN Golf Properties, LLC Attn: Ted Lambert 1 Club Drive Clayton, OH 45315
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The parties by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

(b) Extent of Provisions: No Personal Liability. All rights, remedies, representations warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation, or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty covenant, agreement, obligation or stipulation of any present or future official, member, officer, agent, or employee of the City or the Company in other than his or her official capacity. No official executing or approving the City's or the Company's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

(c) Amendments. This Agreement may only be amended by a written instrument executed by both Parties.

(d) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(e) Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

(i) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into, or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein:

(ii) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and

(iii) each section, provision, covenant, agreement, obligation or action, or part thereof shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the fullest extent permitted by law.

(f) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of the Agreement.

(g) Governing Law and Choice of Forum. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Company, its employees and agents, arising out of or relating to this Agreement or breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

In witness thereof, the Parties have caused this Agreement to be executed this _____ day of _____, 2022.

CITY OF TROTWOOD

BY: _____
Quincy Pope, City Manager

TPN Golf Properties, LLC
an Ohio limited liability company

By: _____
Name: _____
Its: _____