

RESOLUTION NO. 59-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, REPEALING RESOLUTION NO. 44-2019; APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE SALE BY THE CITY OF MESQUITE, TEXAS (THE "CITY"), OF AN APPROXIMATELY 5.315 ACRE TRACT OF CITY-OWNED PROPERTY LOCATED WITHIN THE MESQUITE RODEO CITY REINVESTMENT ZONE NUMBER ONE, CITY OF MESQUITE, TEXAS (THE "CITY TRACT"), TO MM MESQUITE 50, LLC, A TEXAS LIMITED LIABILITY COMPANY (THE "DEVELOPER"); AUTHORIZING THE CITY MANAGER TO NEGOTIATE, FINALIZE AND EXECUTE A CONTRACT OF SALE, DEED AND ALL OTHER DOCUMENTS NECESSARY OR ADVISABLE TO COMPLETE THE SALE OF THE CITY TRACT TO THE DEVELOPER; PROVIDING A GRANT TO THE DEVELOPER IN THE AMOUNT OF THE PURCHASE PRICE OF THE CITY TRACT, THE CITY TRACT TO BE DEVELOPED AS PART OF A MIXED USE DEVELOPMENT CONTAINING RETAIL, RESTAURANT, OFFICE, RESIDENTIAL COMPONENTS AND OTHER ASSOCIATED USES IN ACCORDANCE WITH CITY ORDINANCE NO. 4595 (THE "IRON HORSE PROJECT") IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City of Mesquite, Texas ("City"), and MM Mesquite 50, LLC, a Texas limited liability company (the "Developer"), have executed that certain Iron Horse Development Agreement dated November 19, 2018, as amended by that certain First Amendment to Iron Horse Development Agreement between the City and the Developer dated effective March 18, 2019 and by that certain Second Amendment to Iron Horse Development Agreement between the City and the Developer dated effective May 20, 2019, said agreement, as now and hereafter amended, being hereinafter collectively referred to as the "Iron Horse Development Agreement," for the design, development and construction of a mixed use development containing retail, restaurant, office, residential components and other associated uses in accordance with City Ordinance No. 4595 (the "Iron Horse Project"); and

WHEREAS, the City owns an approximately 5.315 acre tract of land within the Mesquite Rodeo City Reinvestment Zone Number One, City of Mesquite, Texas, and being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes (the "City Tract"); and

WHEREAS, the Iron Horse Development Agreement contemplates that the City Tract will be purchased by the Developer for \$926,100.00, which is the fair market value of the City Tract, in accordance with Section 272.001(b)(6) of the Texas Local Government Code, and developed as part of the Iron Horse Project; and

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, on June 3, 2019, the City Council of the City (the "City Council") was presented with a proposed agreement providing economic development incentives (the "Draft Agreement") to the Developer in the form of a grant to the Developer in the amount of \$926,100.00 to purchase the City Tract (the "Grant"), and, following a public hearing, approved the Draft Agreement by Resolution No. 44-2019; and

WHEREAS, the Grant to the Developer will incentivize the development of the Iron Horse Project; and

WHEREAS, the City Council has determined that the sale of the City Tract to the Developer and the Grant to the Developer is in the public interest of the City and its citizens; and

WHEREAS, additional revisions were made to the Draft Agreement necessitating further review and consideration by the City Council; a copy of the revised document retaining provisions for the purchase of the City Tract by the Developer and providing the Grant to the Developer being attached as Exhibit "B" and incorporated herein by reference (the "Final Agreement"); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Final Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Final Agreement is in the best interest of the City and will benefit the City and its citizens, and will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The City Council hereby repeals Resolution No. 44-2019, finds that the terms and conditions of the Final Agreement including the Grant, having been reviewed by the City Council and a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, is in the best interest of and will benefit the City and its citizens and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code, finds the Final Agreement is acceptable and hereby approves the Final Agreement.

SECTION 2. The City Council hereby approves the sale of the City Tract to the Developer for the purchase price of \$926,100.00, and hereby authorizes the City Manager to negotiate, finalize and execute a contract of sale, deed and all other documents necessary or advisable to complete the sale of the City Tract to the Developer.

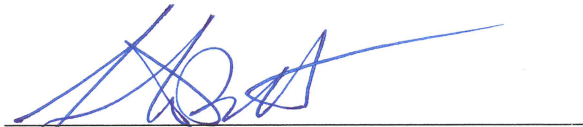
SECTION 3. The City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Final Agreement, the City will provide economic development incentives to the Developer and take other specified actions as more fully

set forth in the Final Agreement in accordance with the terms and subject to the conditions outlined in the Final Agreement.

SECTION 4. The City Manager is hereby authorized to negotiate, finalize and execute the Final Agreement and all other documents necessary to consummate the transactions contemplated by the Final Agreement and is further hereby authorized to administer the Final Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Final Agreement; (ii) approve amendments to the Final Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Final Agreement in excess of \$50,000; (iii) approve or deny any matter in the Final Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Final Agreement that requires the consent of the City pursuant to the terms of the Final Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Final Agreement; (v) exercise any rights and remedies available to the City under the Final Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 4 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 4 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 5. The sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of August 2019.



Stan Pickett  
Mayor

ATTEST:



Sonja Land  
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall  
City Attorney

## DESCRIPTION

Being a 5.315 acre tract of land situated in the Joe Badgley Survey, Abstract number 74, City of Mesquite, Dallas County, Texas, and being all of that certain tract or parcel of land as described in deed to JADO Properties, Inc. as recorded in Volume 87209, Page 1419 of the Deed Records of Dallas County, Texas, said 5.315 acre tract being more particularly described as follows:

Beginning at a 1/2 inch iron rod found for the southeast corner of the herein described tract, the southeast corner of said JADO tract, the southernmost southwest corner of a called 2.821 acre tract of land as described in deed to Scyene Rodeo, LTD. as recorded in Volume 2000064, Page 2651 of said Deed Records, said iron rod also being in the north right-of-way line of Rodeo Drive (a 60 foot wide right-of-way) and being South 89 degrees 06 minutes 14 seconds West, a distance of 166.28 feet from the intersection of the north right-of-way line of Rodeo Drive with the west right-of-way line of Hickory Tree Road (a 60 foot wide right-of-way);

Thence South 89 degrees 06 minutes 14 seconds West, along the south line of said JADO tract and the north right-of-way line of Rodeo Drive, a distance of 545.97 feet to a 1/2 inch iron found for the southwest corner of said JADO tract and the southeast corner of a called 1.9483 acre tract (Tract 5) as described in said Scyene Rodeo, LTD. deed and being North 89 degrees 06 minutes 14 seconds East, a distance of 208.67 feet from a 1/2 inch iron rod found for reference;

Thence North 00 degrees 43 minutes 50 seconds West, along the west line of said JADO tract and east line of said called 1.9483 acre tract, a distance of 497.71 feet to a 1/2 inch iron rod found for the northwest corner of said JADO tract and the northeast corner of said called 1.9483 acre tract and being in the South line of a called 18.3003 acre tract (Tract 2) of said Scyene Rodeo, LTD. deed, said iron rod also being North 44 degrees 15 minutes 38 seconds East, a distance of 310.11 feet from a 1/2 inch iron rod found for the southernmost southwest corner of said called 18.3003 acre tract;

Thence North 89 degrees 10 minutes 20 seconds East, along the north line of said JADO tract and the south line of said called 18.3003 acre tract, a distance of 366.01 feet to a 1/2 inch iron rod found for the northermost northeast corner of said JADO tract and the northermost northwest corner of aforesaid called 2.821 acre tract;

Thence along the common line of said JADO tract and said called 2.821 acre tract the following calls:

South 00 degrees 44 minutes 54 seconds East, a distance of 222.59 feet to a 3/8 inch iron rod found;

North 89 degrees 08 minutes 34 seconds East, a distance of 179.97 feet to a 1/2 inch iron rod found;

South 00 degrees 42 minutes 52 seconds East, a distance of 274.56 feet to the Point Of Beginning and containing 5.315 acres or 231,525 square feet of land more or less.

NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.



## CITY TRACT ECONOMIC DEVELOPMENT AGREEMENT

THIS City Tract Economic Development Agreement (the "Agreement") by and between the CITY OF MESQUITE, TEXAS a home-rule city and municipal corporation situated in Dallas and Kaufman Counties, Texas (the "City") and MM Mesquite 50, LLC (the "Developer"), a Texas limited liability company, for the development of a mixed use development containing retail, restaurant, office, residential components, and other associated uses in accordance with Ordinance No. 4595 approved by the City Council of the City on September 4, 2018, as amended (the "Iron Horse Project") is executed as of this 5<sup>th</sup> day of August, 2019 (the "Effective Date").

WHEREAS, the City and Developer have executed that certain Iron Horse Development Agreement dated November 19, 2018, as amended by that certain First Amendment to Iron Horse Development Agreement between the City and the Developer dated effective March 18, 2019, and as amended by that certain Second Amendment to Iron Horse Development Agreement between the City and the Developer dated effective May 20, 2019, said agreement, as now and hereafter amended, being hereinafter collectively referred to as the "Iron Horse Development Agreement," for the design, development and construction of the Iron Horse Project; and

WHEREAS, the construction and operation of the Iron Horse Project will generate new City sales and use taxes, City mixed beverage taxes, and City ad valorem taxes; and

WHEREAS, the City owns an approximately 5.315 acre tract of property within the Iron Horse Project more particularly described in Exhibit A-2 to the Iron Horse Development Agreement (the "City Tract") and in order to incentivize the development of the Iron Horse Project has determined to grant lawfully available funds of the City to the Developer in order to purchase the City Tract; and

WHEREAS, a portion of the City Tract will be developed as part of the Iron Horse Project for residential use and the remaining portion of the City Tract will be developed as part of the Iron Horse Project for commercial use; and

WHEREAS, the City has found that providing a grant of funds to Developer in exchange for Developer's completion of the Public Improvements and development of the Iron Horse Project will promote local economic development and stimulate business and commercial activity and create jobs within the City (the "Program"); and

WHEREAS, the City has determined that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that public purpose is accomplished; and

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of Texas Local Government Code provide constitutional and statutory authority for establishing and administering the Program to provide grants or incentives of public money to promote local economic development and to stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.**

“Affiliates” means any person directly controlling, or directly controlled by or under direct common control with the Developer. As used in this definition, the term “control,” “controlling” or “controlled by” shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of the Developer, or (b) direct or cause the direction of management or policies of the Developer, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of the Developer or any affiliate of such lender.

“Architectural Standards” means the architectural standards set forth in Exhibit L to the Iron Horse Development Agreement.

“City Tract” shall have the meaning set forth in the Recitals of this Agreement.

“City Tract A” shall have the meaning set forth in Section 5(a) of this Agreement.

“City Tract A Condition Subsequent” and “City Tract A Conditions Subsequent” shall have the meanings set forth in Section 4(c)(i) of this Agreement.

“City Tract A Release Conditions Precedent” shall have the meaning set forth in Section 4(d) of this Agreement.

“City Tract B” shall have the meaning set forth in Section 5(a) of this Agreement.

“City Tract B Condition Subsequent” and “City Tract B Conditions Subsequent” shall have the meanings set forth in Section 4(c)(iv) of this Agreement.

“City Tract B Release Conditions Precedent” shall have the meaning set forth in Section 4(f) of this Agreement.

“City Tracts A&B” shall mean City Tract A and City Tract B, collectively.

“City’s Reversionary Interests in City Tract A” shall have the meaning set forth in Section 4(c)(i) of this Agreement.

“City’s Reversionary Interests in City Tract B” shall have the meaning set forth in Section 4(c)(iv) of this Agreement.

“Commence Construction of the Private Horizontal Improvements” and “Commencement of Construction of the Private Horizontal Improvements” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been

obtained for construction of the Private Horizontal Improvements; (ii) all necessary permits for the initiation of construction of the Private Horizontal Improvements pursuant to the plans therefore have been issued by all applicable governmental authorities; (iii) grading for the construction of the Private Horizontal Improvements has commenced; and (iv) construction of the Private Horizontal Improvements has commenced to the satisfaction of the City Manager of the City which shall be upon completion of five percent (5%) of the Private Horizontal Improvements.

“Complete Construction of the Detention Ponds, Sidewalks and Trails” and “Completion of Construction of the Detention Ponds, Sidewalks and Trails” shall mean that the construction of the Detention Ponds, Sidewalks and Trails have been substantially completed in compliance with all building codes, ordinances and regulations of the City and in accordance with the Concept Plan, the Landscape Plan, all other plans approved by the City and in compliance with all building permits issued by the City in connection with or relating to the Detention Ponds, Sidewalks and Trails; and (ii) the City has inspected the Detention Ponds, Sidewalks and Trails and has confirmed in writing that the Detention Ponds, Sidewalks and Trails have been completed to the satisfaction of the City.

“Complete Construction of the Peachtree Road Improvements” and “Completion of Construction of the Peachtree Road Improvements” shall mean that construction of the Peachtree Road Improvements has been substantially completed pursuant to the City’s determination and the City has accepted the Peachtree Road Improvements as evidenced by a letter of acceptance issued by the City.

“Complete Construction of the Public Improvements” and “Completion of Construction of the Public Improvements” shall mean that construction of the Public Improvements has been substantially completed pursuant to the City’s determination and the City has accepted the Public Improvements as evidenced by a letter of acceptance issued by the City.

“Complete the Landscaping and Fencing Improvements” and “Completion of the Landscaping and Fencing Improvements” shall mean that the Landscaping and Fencing Improvements have been substantially completed in compliance with all building codes, ordinances and regulations of the City and in accordance with the Concept Plan, the Landscape Plan, the Fencing Plan, all other plans approved by the City and in compliance with all building permits issued by the City in connection with or relating to the Landscaping and Fencing Improvements; and (ii) the City has inspected the Landscaping and Fencing Improvements and has confirmed in writing that the Landscaping and Fencing Improvements have been completed to the satisfaction of the City.

“Concept Plan” means that certain conceptual drawing of the Iron Horse Project set forth on Exhibit C to the Iron Horse Development Agreement.

“Detention Ponds, Sidewalks and Trails” shall mean the detention ponds, sidewalks and trails to be constructed on Tract 1-B1 and Tract 1-B2 and the sidewalks and trails to be constructed within the common areas of Tract 1C and Tract 2A as part of the Iron Horse Project [specifically excluding any sidewalks to be constructed on the residential lots within Tract 1C and Tract 2A] and being more particularly identified and depicted on the Concept Plan and Landscape Plan.



“Developer Event of Default” shall have the meaning set forth in Section 7(d) of this Agreement.

“Easement Tracts” shall have the meaning set forth in Section 4(c) of this Agreement.

“Fencing Plan” means the plan setting forth the fencing requirements for the Property as part of the Iron Horse Project and being depicted on Exhibit K to the Iron Horse Development Agreement.

“Grant” means lawfully available funds of the City, subject to annual appropriation, in the amount of \$926,100.00, and being defined in Section 4(a) of this Agreement.

“HOA” shall have the meaning set forth in Section 4(c)(i)(5) of this Agreement.

“Landscape Plan” means the plan setting forth the landscaping requirements for the Property as part of the Iron Horse Project and being depicted on Exhibit E to the Iron Horse Development Agreement.

“Landscaping and Fencing Improvements” shall mean the landscaping and fencing improvements to be installed and/or constructed on Tract 1B-1 and Tract 1B-2 as part of the Iron Horse Project and being more particularly identified and depicted on the Concept Plan, the Landscape Plan and the Fencing Plan.

“Mesquite Arena” means that certain rodeo, sports and entertainment venue located at 1818 Rodeo Drive, Mesquite, Texas 75149.

“Non-Residential CC&Rs” shall have the meaning set forth in Section 4(c)(iv)(11) of this Agreement.

“Non-Residential Tracts” means those portions of the Property within the Iron Horse Project depicted and identified on the Concept Plan as Tract 1A, Tract 1B-1, Tract 1B-2 and Tract 1D.

“Party” means Developer or the City. “Parties” means Developer and the City.

“Peachtree Road Economic Development Agreement” means that certain Peachtree Road Economic Development Agreement dated effective of even date herewith between the Developer and the City relating to economic development incentives granted by the City to the Developer in connection with the construction by the Developer of the Peachtree Road Improvements.

“Peachtree Road Improvements” means the improvements to be designed and constructed by the Developer to Peachtree Road in connection with the Iron Horse Project and as more particularly set forth in Exhibit J to the Iron Horse Development Agreement.

“PID” means the Iron Horse Public Improvement District authorized and created by the City pursuant to the PID Act and the PID Resolution.

“PID Act” means Chapter 372 of the Texas Local Government Code, as amended.

“PID Resolution” means Resolution No. 15-2019 approved by the City Council of the City on February 4, 2019, authorizing and creating the Iron Horse Public Improvement District pursuant to the PID Act.

“POA” shall have the meaning set forth in Section 4(c)(iv)(11) of this Agreement.

“Private Horizontal Improvements” shall mean the screening fence, landscaping and irrigation improvements to be installed and/or constructed on Tract 1C and Tract 2A as part of the Iron Horse Project and being more particularly identified and depicted on the Concept Plan, Landscape Plan and Fencing Plan.

“Property” means approximately 58.213 acres of land located within the City and depicted in Exhibit “A” and described in Exhibit B to the PID Resolution.

“Public Improvements” means public improvements to be developed and constructed or caused to be developed and constructed inside and outside the PID by the Developer to serve the PID and the Property as set forth in the Service and Assessment Plan.

“Residential CC&Rs” shall have the meaning set forth in Section 4(c)(i)(5) of this Agreement.

“Residential Tracts” means those portions of the Property within the Iron Horse Project where the following residential uses are planned: zero lot line residential use, villa residential use, bungalow residential use and townhome residential use and being the tracts identified and depicted on the Concept Plan as Tract 1C, Tract 2A and Tract 3.

“Service and Assessment Plan” means the document attached as Exhibit A to City Ordinance No. 4680 levying special assessments on the Property pursuant to Chapter 372, Texas Local Government Code, as such document may be updated, amended and supplemented from time to time, all as contemplated by the Iron Horse Development Agreement.

“Term” means the term of this Agreement as specified in Section 2 of this Agreement.

“Tract 1A” means the commercial tract located within the Iron Horse Project identified as Tract 1A on the Concept Plan.

“Tract 1B-1” means the tract located within the Iron Horse Project identified as Tract 1B-1 on the Concept Plan.

“Tract 1B-2” means the tract located within the Iron Horse Project identified as Tract 1B-2 on the Concept Plan.

“Tract 1C” means the residential tract located within the Iron Horse Project identified as Tract 1C on the Concept Plan.

“Tract 1D” means the commercial tract located within the Iron Horse Project identified as Tract 1D on the Concept Plan.

“Tract 2A” means the residential tract located within the Iron Horse Project identified as Tract 2A on the Concept Plan [Tract 2A does not include the commercial tract designated as Tract 2B on the Concept Plan].

“Tract 3” means the residential tract located within the Iron Horse Project identified as Tract 3 on the Concept Plan.

“Undocumented Workers” shall mean (i) individuals who, at the time of employment with the Developer, are not lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other persons as are included within the definition of “Undocumented worker” pursuant to V.T.C.A., Government Code Section 2264.001(4), as hereafter amended or replaced or any other applicable law or regulations.

2. **Term.** This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the date that is the earlier of: (i) the termination of this Agreement by the City upon a Developer Event of Default or a termination pursuant to Section 7 of this Agreement; or (ii) the date that is the later of (a) the transfer of the City Tract to the Developer; (b) the execution and delivery by the City to the Developer of a release of the City’s Reversionary Interests in City Tract A (as hereinafter defined); and (c) the execution and delivery by the City to the Developer of a release of the City’s Reversionary Interests in City Tract B (as hereinafter defined).

3. **Construction of Public Improvements.** In consideration of the City entering into this Agreement providing for the payment of funds constituting the Grant (hereinafter defined) to Developer under the terms and conditions set forth herein, Developer agrees to design and construct or cause to be designed and constructed the Public Improvements on the Property.

4. **Grants by City.**

(a) In exchange for Developer’s compliance with all terms and provisions of this Agreement, City shall, as an incentive, grant to the Developer \$926,100.00 (the “Grant”).

(b) The Grant shall be payable contemporaneously with the closing of the purchase of City Tracts A&B by the Developer, shall be applied as a credit to the purchase price of City Tracts A&B and shall be payable only upon satisfaction of all conditions as specified in Section 5 of this Agreement, from lawfully available funds, subject to annual appropriation.

(c) Pursuant to the execution and approval of the appropriate sale documents and title transfer documents, the City intends to transfer City Tracts A&B contemporaneously with payment by the Developer of the purchase price therefor. The purpose of the Grant and the conveyance of City Tracts A&B to the Developer is to facilitate and incentivize the construction of the Public Improvements and the development of the Iron Horse Project and accordingly, such transfer documents, quitclaim deed for City Tract A, and quitclaim deed for City Tract B, shall contain

such terms, provisions and conditions as are acceptable to the City including, without limitation, the conveyance of City Tracts A&B by the City to the Developer shall be **“AS IS, WHERE IS” and “WITH ALL FAULTS,”** contain such disclaimers of representations and warranties, express and implied, as the City deems advisable, contain restrictions against conveying and encumbering City Tract A without the written consent of the City prior to the release by the City of the City’s Reversionary Interests in City Tract A, contain restrictions against conveying and encumbering City Tract B without the written consent of the City prior to the release by the City of the City’s Reversionary Interests in City Tract B, contain environmental covenants and indemnities of the Developer, and include the reservation of easements and rights of way at no cost to the City for the benefit of the City and all public utilities over such portions of City Tracts A&B as the City deems necessary (the “Easement Tracts”) containing such terms as are acceptable to the City for access, ingress and egress to, from and upon the Easement Tracts for such purposes as the City deems advisable including, without limitation, constructing, reconstructing, inspecting, patrolling, maintaining, adding to, and removing the Public Improvements. The quitclaim deed for City Tract A and the quitclaim deed for City Tract B shall further provide, inter alia, the following:

- (i) The estate quitclaimed by the City to the Developer in City Tract A shall be in fee simple subject to condition subsequent with the City retaining and reserving for the benefit of the City and its successors and assigns, a right of reverter, right of re-entry, power of termination and right of reconveyance of City Tract A (collectively the “City’s Reversionary Interests in City Tract A”). The quitclaim deed for City Tract A shall be made and accepted by the Developer expressly subject to the following conditions subsequent (individually a “City Tract A Condition Subsequent” and collectively the “City Tract A Conditions Subsequent”):
  - (1) Developer shall Complete Construction of the Public Improvements on or before November 19, 2023;
  - (2) Developer shall Commence Construction of the Private Horizontal Improvements on or before November 19, 2023;
  - (3) Developer shall Complete Construction of the Peachtree Road Improvements on or before November 19, 2023;
  - (4) Developer shall not deliver any residential lots on the Residential Tracts to a third party prior to the Completion of Construction of the Peachtree Road Improvements and the Completion of Construction of the Public Improvements;
  - (5) Developer shall: (i) establish a home owners’ association over the Residential Tracts (“HOA”); (ii) record covenants, conditions and restrictions affecting the Residential Tracts in the property records of Dallas County, Texas, requiring the assessment and collection from property owners within the Residential Tracts of annual fees in an amount calculated to maintain the open spaces, common areas, right-of-way irrigation systems, raised medians and other right-of-way landscaping, detention areas,

drainage areas, screening walls, parks, trails, lawns, and any other common improvements or appurtenances as identified on the Landscape Plan within the Residential Tracts (the “Residential CC&Rs”); and (iii) record the Architectural Standards as covenants, conditions and restrictions against the Residential Tracts in the property records of Dallas County, Texas, on or before the earlier of: (a) the transfer of all or any portion of the Residential Tracts to a third party; or (b) November 19, 2023; and

- (6) This Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement shall not have been terminated by the City prior to the satisfaction of all City Tract A Release Conditions Precedent;
- (ii) The quitclaim deed by the City to the Developer for City Tract A shall further be made and accepted by the Developer on the express condition that if any City Tract A Condition Subsequent is breached or fails to timely occur, or if this Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement is terminated by the City prior to the satisfaction of all City Tract A Release Conditions Precedent, the City shall have the right to re-enter and take possession of City Tract A, in which event City Tract A shall revert to the City and the City shall further have the right and power to terminate all right, title and interest of the Developer, its successors and assigns, and all future owners of City Tract A, in and to City Tract A, in which event the estate of the Developer, its successors and assigns, and all future owners of City Tract A, shall be forfeited and title to City Tract A, together with all improvements located thereon, shall re-vest in the City at no cost to the City as fully and completely as if no conveyance of City Tract A by the City to the Developer had ever been executed;
- (iii) The quitclaim deed by the City to the Developer for City Tract A shall further include a provision that if any City Tract A Condition Subsequent is breached or fails to timely occur, or if this Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement is terminated by the City prior to the satisfaction of all City Tract A Release Conditions Precedent, the Developer, its successors and assigns, and all future owners of City Tract A shall, upon written request of the City, reconvey City Tract A to the City at no cost to the City by special warranty deed in recordable form conveying City Tract A to the City free and clear of any and all encumbrances and exceptions except for those consented to in writing by the City and encumbrances and exceptions that exist of record against City Tract A immediately prior to the conveyance of City Tract A by the City to the Developer;
- (iv) The estate quitclaimed by the City to the Developer in City Tract B shall be in fee simple subject to condition subsequent with the City retaining and reserving for the benefit of the City and its successors and assigns, a right of reverter, right of re-entry, power of termination and right of reconveyance of City Tract B (collectively the “City’s Reversionary Interests in City Tract B”). The quitclaim deed for City

Tract B shall be made and accepted by the Developer expressly subject to the following conditions subsequent (individually a “City Tract B Condition Subsequent” and collectively the “City Tract B Conditions Subsequent”):

- (1) Developer shall Complete Construction of the Public Improvements on or before November 19, 2023;
- (2) Developer shall Commence Construction of the Private Horizontal Improvements on or before November 19, 2023;
- (3) Developer shall Complete Construction of the Peachtree Road Improvements on or before November 19, 2023;
- (4) Developer shall not deliver any residential lots on the Residential Tracts to a third party prior to the Completion of Construction of the Peachtree Road Improvements and the Completion of Construction of the Public Improvements;
- (5) Developer shall establish the HOA and record the Residential CC&Rs and the Architectural Standards in the property records of Dallas County, Texas on or before the earlier of: (i) the transfer of all or any portion of the Residential Tracts to a third party; or (ii) November 19, 2023;
- (6) Developer shall dedicate or convey to the City by final plat or separate instrument, at no cost to the City, a ten-foot (10’) right-of-way for the construction of the Military Parkway Trail segment along Rodeo Center Boulevard as shown on the Concept Plan, on or before November 1, 2019;
- (7) Developer, at Developer’s sole cost and expense, shall reconstruct or cause the reconstruction of the drive between the Whataburger restaurant located at 1726 Military Parkway, Mesquite, Texas 75149 and the existing commercial development in order to (i) connect to future commercial development, or (ii) isolate future commercial traffic from the drive, on or before November 19, 2023;
- (8) Developer shall Complete the Landscaping and Fencing Improvements on or before November 19, 2023;
- (9) Developer shall execute and deliver to the City or, if the Mesquite Arena is not owned by the Developer, to cause the owner of the Mesquite Arena to execute and deliver to the City: (i) a new agreement containing terms acceptable to the City relating to parking at or for the Mesquite Arena, the City’s exhibit hall and convention/conference center, and the hotel adjacent to the Mesquite Arena; and (ii) a termination in recordable form of the Reciprocal Parking Agreement recorded in Volume 98180, Page 00025, of the property records of Dallas County, Texas, on or before November 19, 2023;

- (10) Developer shall Complete Construction of the Detention Ponds, Sidewalks and Trails on or before November 19, 2023;
- (11) Developer shall: (i) establish a property owners' association over the Non-Residential Tracts ("POA"); and (ii) record covenants, conditions and restrictions affecting the Non-Residential Tracts in the property records of Dallas County, Texas, requiring the assessment and collection from property owners within the Non-Residential Tracts of annual fees in an amount calculated to maintain the open spaces, common areas, right-of-way irrigation systems, raised medians and other right-of-way landscaping, detention areas, drainage areas, screening walls, parks, trails, lawns, and any other common improvements or appurtenances as identified on the Landscape Plan within the Non-Residential Tracts (the "Non-Residential CC&Rs") on or before the earlier of: (a) the transfer of all or any portion of the Non-Residential Tracts to a third party; or (b) November 19, 2023;
- (12) Developer shall record deed restrictions through the Residential CC&Rs on the southern portion of Tract 2A (identified on the Concept Plan as the "Senior Targeted Area") in compliance with all federal and state laws and consistent with the requirements of Sections 6.04(b), 6.04(c) and 6.04(d) of the Iron Horse Development Agreement to reflect the age restriction contemplated by the Iron Horse Development Agreement on or before the earlier of: (i) the transfer of all or any portion of Tract 2A to a third party; or (ii) November 19, 2023; and
- (13) This Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement shall not have been terminated by the City prior to the satisfaction of all City Tract B Release Conditions Precedent;
- (v) The quitclaim deed by the City to the Developer for City Tract B shall further be made and accepted by the Developer on the express condition that if any City Tract B Condition Subsequent is breached or fails to timely occur, or if this Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement is terminated by the City prior to the satisfaction of all City Tract B Release Conditions Precedent, the City shall have the right to re-enter and take possession of City Tract B, in which event City Tract B shall revert to the City and the City shall further have the right and power to terminate all right, title and interest of the Developer, its successors and assigns, and all future owners of City Tract B, in and to City Tract B, in which event the estate of the Developer, its successors and assigns, and all future owners of City Tract B shall be forfeited and title to City Tract B, together with all improvements located thereon, shall re-vest in the City at no cost to the City as fully and completely as if no conveyance of City Tract B by the City to the Developer had ever been executed;

(vi) The quitclaim deed by the City to the Developer for City Tract B shall further include a provision that if any City Tract B Condition Subsequent is breached or fails to timely occur, or if this Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement is terminated by the City prior to the satisfaction of all City Tract B Release Conditions Precedent, the Developer, its successors and assigns, and all future owners of City Tract B shall, upon written request of the City, reconvey City Tract B to the City at no cost to the City by special warranty deed in recordable form conveying City Tract B to the City free and clear of any and all encumbrances and exceptions except for those consented to in writing by the City and encumbrances and exceptions that exist of record against City Tract B immediately prior to the conveyance of City Tract B by the City to the Developer; and

(vii) The deeds quitclaiming City Tract A and City Tract B to the Developer shall further include: (a) provisions that the conditions contained in the deeds and the City's rights of reverter, rights of re-entry, powers of termination and rights of reconveyance shall run with the land and shall be binding on the Developer, its successors and assigns, and all future owners of City Tract A and City Tract B, and shall further provide that the City's Reversionary Interests in City Tract A and the City's Reversionary Interests in City Tract B are reserved and retained for the benefit of the City and its successors and assigns; (b) provisions that both Developer and the City took part in drafting the deeds and that the deeds are not to be construed more strongly against the City; and (c) provisions that the City and its successors and assigns shall be entitled to all remedies available by law and in equity to enforce the City's Reversionary Interests in City Tract A and the City's Reversionary Interests in City Tract B including, without limitation, the right to file a trespass to try title action and/or any other suit in a court of competent jurisdiction seeking, among other relief, to recover title and possession of City Tract A and/or City Tract B and further seeking damages, specific performance, injunctive relief and/or a declaratory judgment, and the City, its successors and assigns, shall be entitled to the recovery of reasonable attorneys' fees, court costs and litigation expenses, such rights and remedies of the City shall inure to the benefit of the City's successors and assigns and shall expressly survive the execution and delivery of such quitclaim deeds.

(d) The following shall be conditions precedent to the execution and delivery by the City to the Developer of a release of the City's Reversionary Interests in City Tract A (collectively the "City Tract A Release Conditions Precedent"):

1. Completion of Construction of the Public Improvements has occurred on or before November 19, 2023;
2. Commencement of Construction of the Private Horizontal Improvements has occurred on or before November 19, 2023;



3. Completion of Construction of the Peachtree Road Improvements has occurred on or before November 19, 2023;
4. No residential lots on the Residential Tracts have been delivered by the Developer to a third party prior to the later of: (a) Completion of Construction of the Peachtree Road Improvements; and (b) Completion of Construction of the Public Improvements;
5. Developer has established the HOA and has recorded the Residential CC&Rs and the Architectural Standards in the property records of Dallas County, Texas on or before the earlier of: (i) the transfer of all or any portion of the Residential Tracts to a third party; or (ii) November 19, 2023;
6. No Developer Event of Default shall then exist, and no event shall exist which, but for notice, the passage of time, or both, would constitute a Developer Event of Default; and
7. This Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement shall not have been terminated prior to the satisfaction of the City Tract A Release Conditions Precedent set forth in Sections 4(d)(1) through 4(d)(6) above, inclusive.

(e) Provided this Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement have not been terminated prior to the satisfaction of all of the City Tract A Release Conditions Precedent, the City shall provide a written release of the City's Reversionary Interests in City Tract A in recordable form to the Developer within sixty (60) days after all of the City Tract A Release Conditions Precedent have been satisfied.

(f) The following shall be conditions precedent to the execution and delivery by the City to the Developer of a release of the City's Reversionary Interests in City Tract B (collectively the "City Tract B Release Conditions Precedent"):

1. Completion of Construction of the Public Improvements has occurred on or before November 19, 2023;
2. Commencement of Construction of the Private Horizontal Improvements has occurred on or before November 19, 2023;
3. Completion of Construction of the Peachtree Road Improvements has occurred on or before November 19, 2023;
4. No residential lots on the Residential Tracts have been delivered by the Developer to a third party prior to the later of: (a) Completion of Construction of the Peachtree Road Improvements; and (b) Completion of Construction of the Public Improvements;

5. Developer has established the HOA and has recorded the Residential CC&Rs and the Architectural Standards in the property records of Dallas County, Texas on or before the earlier of: (i) the transfer of all or any portion of the Residential Tracts to a third party; or (ii) November 19, 2023;
6. Developer has dedicated or conveyed to the City by final plat or separate instrument, at no cost to the City, a ten-foot (10') right-of-way for the construction of the Military Parkway Trail segment along Rodeo Center Boulevard as shown on the Concept Plan, on or before November 1, 2019;
7. Developer, at Developer's sole cost and expense, has reconstructed or caused the reconstruction of the drive between the Whataburger restaurant located at 1726 Military Parkway, Mesquite, Texas 75149 and the existing commercial development in order to (i) connect to future commercial development, or (ii) isolate future commercial traffic from the drive, on or before November 19, 2023;
8. Completion of the Landscaping and Fencing Improvements has occurred on or before November 19, 2023;
9. Developer has executed and delivered to the City or, if the Mesquite Arena is not owned by the Developer, has caused the owner of the Mesquite Arena to execute and deliver to the City: (i) a new agreement containing terms acceptable to the City relating to parking at or for the Mesquite Arena, the City's exhibit hall and convention/conference center, and the hotel adjacent to the Mesquite Arena; and (ii) a termination in recordable form of the Reciprocal Parking Agreement recorded in Volume 98180, Page 00025, of the property records of Dallas County, Texas, on or before November 19, 2023;
10. Completion of Construction of the Detention Ponds, Sidewalks and Trails has occurred on or before November 19, 2023;
11. Developer has established the POA and has recorded the Non-Residential CC&Rs in the property records of Dallas County, Texas on or before the earlier of: (i) the transfer of all or any portion of the Non-Residential Tracts to a third party; or (ii) November 19, 2023;
12. Developer has recorded deed restrictions through the Residential CC&Rs on the southern portion of Tract 2A (identified on the Concept Plan as the "Senior Targeted Area") in compliance with all federal and state laws and consistent with the requirements of Sections 6.04(b), 6.04(c) and 6.04(d) of the Iron Horse Development Agreement to reflect the age restriction contemplated by the Iron Horse Development Agreement on or before the earlier of: (i) the transfer of all or any portion of Tract 2A to a third party; or (ii) November 19, 2023;

13. No Developer Event of Default shall then exist, or no event shall exist which, but for notice, the passage of time, or both, would constitute a Developer Event of Default; and
14. This Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement shall not have been terminated prior to the satisfaction of all City Tract B Release Conditions Precedent set forth in Sections 4(f)(1) through 4(f)(13) above, inclusive.

(g) Provided this Agreement, the Peachtree Road Economic Development Agreement and/or the Iron Horse Development Agreement have not been terminated prior to the satisfaction of all City Tract B Release Conditions Precedent, the City shall provide a written release of the City's Reversionary Interests in City Tract B in recordable form to the Developer within sixty (60) days after all of the City Tract B Release Conditions Precedent have been satisfied.

(h) The Developer shall pay all assessments billed on City Tracts A&B prior to the conveyance of City Tracts A&B by the City to the Developer. The Developer shall pay all assessments billed on City Tract A during the Developer's ownership of City Tract A. The Developer shall pay all assessments billed on City Tract B during the Developer's ownership of City Tract B. The City shall not be responsible for the payment of any assessments on City Tracts A&B. All sale and transfer documents shall provide that the City shall not be obligated to pay any assessments levied on City Tracts A&B pursuant to the PID Act. All sale and transfer documents shall further provide that the Developer shall be responsible for the payment of all taxes accruing on City Tract A from the date City Tract A is transferred by the City to the Developer and thereafter during the Developer's ownership of City Tract A. All sale and transfer documents shall further provide that the Developer shall be responsible for the payment of all taxes accruing on City Tract B from the date City Tract B is transferred by the City to the Developer and thereafter during the Developer's ownership of City Tract B. The terms and provisions of this Section 4(h) and the obligations of the Developer pursuant to this Section 4(h) shall expressly survive the expiration or termination of this Agreement, subject to Section 4(j).

(i) In the event this Agreement is terminated by the City: (a) pursuant to Section 7(b) of this Agreement; or (b) upon the occurrence of a Developer Event of Default including, without limitation, if this Agreement is terminated by the City in the event the Developer fails to timely comply with any City Tract A Condition Subsequent or any City Tract B Condition Subsequent, or in the event any City Tract A Condition Subsequent or any City Tract B Condition Subsequent fails to timely occur, the City Tract A Conditions Subsequent, City Tract B Conditions Subsequent, City Tract A Release Conditions Precedent, City Tract B Release Conditions Precedent, all terms, provisions and conditions of this Agreement relating thereto, and all terms, provisions, covenants, conditions, rights and remedies set forth in Section 4 of this Agreement shall expressly survive such termination of this Agreement.

(j) Notwithstanding Section 4(i) above, upon: (a) the execution and delivery by the City to the Developer of a release of the City's Reversionary Interests in City Tract A; and (b) the execution and delivery by the City to the Developer of a release of the City's Reversionary Interests in City Tract B, this Agreement shall expire and terminate, and in such event the City Tract A

Conditions Subsequent, City Tract B Conditions Subsequent, all terms, provisions, covenants and conditions relating thereto, and all terms, provisions, covenants, conditions, rights and remedies set forth in Section 4 of this Agreement, shall not survive such expiration and termination.

5. **Conditions to Grant.** The Grant shall not be disbursed by the City unless and until all of the following conditions have been satisfied:

(a) The Developer has provided surveys to the City with metes and bounds descriptions and depictions of the portion of the City Tract to be developed for residential use (“City Tract A”) and the portion of the City Tract to be developed for commercial use (“City Tract B”), such portions to be developed for residential use and commercial use to be consistent with the Concept Plan, and the City has approved of such surveys and of the descriptions and depictions of City Tract A and City Tract B;

(b) The Developer has provided surveys to the City with metes and bounds descriptions and depictions of the Easement Tracts, which surveys shall be paid for by the Developer and approved by mutual agreement of the City and the Developer;

(c) The City and the Developer have entered into transfer and sale documents for the conveyance of City Tracts A&B acceptable to the City by December 1, 2019, such transfer and sale documents to include, but not be limited to, the provisions in Section 4 of this Agreement;

(d) No development fees owed by the Developer (including all plat review fees, plan review and permit fees, inspection fees, and impact fees) are delinquent as of the date of transfer of City Tracts A&B;

(e) No Developer Event of Default shall then exist, and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Developer Event of Default under the terms of this Agreement;

(f) No Event of Default set forth in Article XIV of the Iron Horse Development Agreement shall then exist, and no event shall exist which, but for notice, the lapse of time, or both, would constitute an Event of Default by the Developer under the terms of Article XIV of the Iron Horse Development Agreement; and

(g) The Developer shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Developer at the Property or at any other branch, division or department of the Developer.

6. **Indemnification.**

DEVELOPER IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PROPERTY OR THE PUBLIC IMPROVEMENTS. DEVELOPER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, IN THEIR PUBLIC CAPACITY, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES,

DAMAGES, CAUSES OF ACTION, AND LIABILITIES OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, EXCLUDING ANY SOLELY NEGLIGENT ACT OR WILLFUL MISCONDUCT OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. THE PROVISIONS OF THIS SECTION 6 AND THE OBLIGATIONS OF THE DEVELOPER PURSUANT TO THIS SECTION 6 SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

7. **Termination, Default and Remedies.**

- (a) This Agreement is terminable by written agreement of the Parties.
- (b) This Agreement is terminable by the City upon any of the following occurrences:
  - (i) A Developer Event of Default under this Agreement including, without limitation, in the event the Developer fails to timely comply with any City Tract A Condition Subsequent or any City Tract B Condition Subsequent, or in the event any City Tract A Condition Subsequent or any City Tract B Condition Subsequent fails to timely occur; or
  - (ii) An Event of Default by the Developer pursuant to Article XIV of the Iron Horse Development Agreement, subject to any notice and cure provisions as provided therein.
- (c) This Agreement is terminable by the Developer upon any of the following occurrences:
  - (i) The Developer has otherwise met all conditions for the Grant and the City does not appropriate lawfully available funds to make the Grant payment; or
  - (ii) The City does not transfer City Tracts A&B to the Developer on or before December 1, 2019.
- (d) **Events of Default.** The following are events of default of the Developer under this Agreement (each a "Developer Event of Default"):
  - (i) The Developer shall fail to timely comply with any City Tract A Condition Subsequent or any City Tract B Condition Subsequent, or in the event any City Tract A Condition Subsequent or any City Tract B Condition Subsequent fails to timely occur;
  - (ii) The Developer shall fail to comply in any material respect with any term, provision, covenant, or condition of this Agreement, other than a City Tract

A Condition Subsequent or a City Tract B Condition Subsequent, and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the Developer;

- (iii) The Developer shall fail to comply in any material respect with any term, provision or covenant of the Peachtree Road Economic Development Agreement and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the Developer;
- (iv) An Event of Default by the Developer pursuant to Article XIV of the Iron Horse Development Agreement, subject to any notice and cure provisions as provided therein;
- (v) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;
- (vi) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;
- (vii) The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of ninety (90) consecutive days; or
- (viii) The failure by Developer or any Affiliates to pay City ad valorem taxes or any assessments on property owned by the Developer and/or any Affiliates within the Iron Horse Project if such failure is not cured within thirty (30) days after written notice by the City.

8. **City's Remedies.**

(a) Upon the termination of this Agreement by the City pursuant to Section 7(b) of this Agreement, or upon the occurrence of a Developer Event of Default including, without limitation, in the event the Developer fails to timely comply with any City Tract A Condition Subsequent or any City Tract B Condition Subsequent, or in the event any City Tract A Condition Subsequent or any City Tract B Condition Subsequent fails to timely occur, the City, its successors and assigns, shall have the right to pursue any remedy or remedies available at law or in equity to enforce: (a) the City's Reversionary Interests in City Tract A; (b) the City's Reversionary Interests in City Tract B; and (c) the agreements, covenants, conditions, and obligations of the Developer set forth in this Agreement including, without limitation, the City, and its successors and assigns, shall have the right to file a trespass to try title action and/or any other suit in a court of competent jurisdiction seeking among other relief, to recover title and possession of City Tract A and/or City Tract B and further seeking damages, specific performance, injunctive relief, and/or a declaratory judgment, and the City, and its successors and assigns, shall be entitled to recover reasonable attorneys' fees, court costs and litigation expenses;

(b) Without limiting the rights and remedies of the City pursuant to Section 8(a) of this Agreement, upon the termination of this Agreement by the City pursuant to Section 7(b) of this Agreement, or upon the occurrence of a Developer Event of Default including, without limitation, in the event the Developer fails to timely comply with any City Tract A Condition Subsequent or in the event any City Tract A Condition Subsequent fails to timely occur, the City shall have the right to re-enter and take possession of City Tract A in which event City Tract A shall revert to the City and the City shall further have the right and power to terminate all right, title and interest of the Developer, its successors and assigns, and all future owners of City Tract A, in and to City Tract A, in which event the estate of the Developer, its successors and assigns, and all future owners of City Tract A, shall be forfeited and title to City Tract A, together with all improvements located thereon, shall re-vest in the City at no cost to the City as fully and completely as if no conveyance of City Tract A by the City to the Developer had ever been executed;

(c) Without limiting the rights and remedies of the City pursuant to Section 8(a) of this Agreement, upon the termination of this Agreement by the City pursuant to Section 7(b) of this Agreement, or upon the occurrence of a Developer Event of Default including, without limitation, in the event the Developer fails to timely comply with any City Tract B Condition Subsequent or in the event any City Tract B Condition Subsequent fails to timely occur, the City shall have the right to re-enter and take possession of City Tract B in which event City Tract B shall revert to the City and the City shall further have the right and power to terminate all right, title and interest of the Developer, its successors and assigns, and all future owners of City Tract B, in and to City Tract B, in which event the estate of the Developer, its successors and assigns, and all future owners of City Tract B, shall be forfeited and title to City Tract B, together with all improvements located thereon, shall re-vest in the City at no cost to the City as fully and completely as if no conveyance of City Tract B by the City to the Developer had ever been executed;

(d) Without limiting the rights and remedies of the City pursuant to Section 8(a) of this Agreement, upon the termination of this Agreement by the City pursuant to Section 7(b) of this Agreement, or upon the occurrence of a Developer Event of Default including, without limitation, in the event the Developer fails to timely comply with any City Tract A Condition Subsequent or if any City Tract A Condition Subsequent fails to timely occur, the Developer, and its successors and assigns, shall upon written request of the City, immediately reconvey City Tract A to the City at no cost to the City, and the Developer, and its successors and assigns, shall deliver to the City a special warranty deed in recordable form conveying City Tract A to the City free and clear of any and all encumbrances and exceptions except for those consented to in writing by the City and encumbrances and exceptions that exist of record against City Tract A immediately prior to the conveyance of City Tract A by the City to the Developer;

(e) Without limiting the rights and remedies of the City set forth in Section 8(a) of this Agreement, upon the termination of this Agreement by the City pursuant to Section 7(b) of this Agreement, or upon the occurrence of a Developer Event of Default including, without limitation, in the event the Developer fails to timely comply with any City Tract B Condition Subsequent or in the event a City Tract B Condition Subsequent fails to timely occur, the Developer, and its successors and assigns, shall upon written request of the City, immediately reconvey City Tract B to the City at no cost to the City, and the Developer, and its successors and assigns, shall deliver to the City a special warranty deed in recordable form conveying City Tract B to the City free and

clear of any and all encumbrances and exceptions except for those consented to in writing by the City and encumbrances and exceptions that exist of record against City Tract B immediately prior to the conveyance of City Tract B by the City to the Developer;

(f) No remedy herein conferred or reserved to the City is intended to be exclusive of any other available remedy or remedies of the City, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder and now or hereafter existing at law or in equity;

(g) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy;

(h) In the event this Agreement is terminated by the City: (a) pursuant to Section 7(b) of this Agreement; or (b) upon the occurrence of a Developer Event of Default including, without limitation, if this Agreement is terminated by the City in the event the Developer fails to timely comply with any City Tract A Condition Subsequent or any City Tract B Condition Subsequent, or in the event any City Tract A Condition Subsequent or any City Tract B Condition Subsequent fails to timely occur, all covenants, conditions, agreements, and obligations of the Developer set forth in Section 8 of this Agreement and all rights and remedies of the City set forth in Section 8 of this Agreement shall expressly survive such termination of this Agreement; and

(i) Notwithstanding Section 8(h) above, upon: (a) the execution and delivery by the City to the Developer of a release of the City's Reversionary Interests in City Tract A; and (b) the execution and delivery by the City to the Developer of a release of the City's Reversionary Interests in City Tract B, this Agreement shall expire and terminate, and in such event the City Tract A Conditions Subsequent, City Tract B Conditions Subsequent, all terms, provisions, covenants and conditions relating thereto, and all terms, provisions, covenants, conditions, rights and remedies set forth in Section 8 of this Agreement, shall not survive such expiration or termination.

9. **Developer Remedies.** Upon the failure of the City to comply in any material respect with any term, provisions or covenant of this Agreement within ninety (90) days after written notice by the Developer to the City, the Developer may pursue any legal remedy or remedies available to the Developer pursuant to the laws of the State of Texas (specifically excluding specific performance and other equitable remedies and specifically excluding punitive, exemplary, special, speculative and consequential damages), and termination of this Agreement; provided, however, that the Developer shall have no right to terminate this Agreement unless the Developer delivers to the City a second notice which expressly provides that the Developer will terminate within thirty (30) days if the default is not addressed as herein provided.

10. **Developer's Purchase of a Release of the City's Reversionary Interests in City Tract B.** During the Term of this Agreement, if: (i) all City Tract A Release Conditions Precedent have been satisfied; (ii) the City has executed and delivered to the Developer a release of the City's Reversionary Interests in City Tract A; (iii) no City Tract B Condition Subsequent has been breached or has failed to timely occur; and (iv) no Developer Event of Default then exists and no event exists which, but for notice, the passage of time, or both would constitute a Developer Event of Default, then Developer, at Developer's option, may make payment to the City of good



funds in the amount equal to the fair market value of City Tract B as determined by an appraisal obtained by the City from an appraiser acceptable to the City (such appraisal shall be paid for by the Developer) as the purchase price for the release of the City's Reversionary Interests in City Tract B, and the City agrees to execute and deliver such release of the City's Reversionary Interests in City Tract B in recordable form to the Developer within thirty (30) days after receipt by the City of Developer's payment as provided herein. Upon the execution and delivery by the City to the Developer of the release of the City's Reversionary Interests in City Tract B, this Agreement shall expire and terminate.

11. **General Provisions.**

(a) **Representations and Warranties.** Developer represents and warrants to the City that it has the requisite authority to enter into this Agreement. Developer represents and warrants to the City that it will not violate any federal, state or local laws in construction of the Public Improvements and that all Public Improvements shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations of the City.

(b) **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(c) **Limited Waiver of Immunity.**

- i. The City and the Developer hereby acknowledge and agree that to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, the City's immunity from suit is waived only as set forth in such statute.
- ii. Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:
  - 1) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Agreement;
  - 2) The recovery of damages against City or the Developer may not include punitive, special, speculative, consequential or exemplary damages;
  - 3) The Parties may not recover attorney's fees provided, however, the Parties agree that this provision shall not limit or affect the City's right to recover attorneys' fees pursuant to Section 8 of this Agreement; and
  - 4) The Developer is not entitled to specific performance or injunctive relief against the City.

(d) **Limitation on Damages.** In no event shall any Party have liability under this Agreement for any punitive, special, speculative, exemplary or consequential damages.

(e) **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Developer and the City and approved by the City through its City Council.

(f) **Assignment.** This Agreement may not be assigned by either Party without the express written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The provisions hereof shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

(g) **Notice.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate Party at the following addresses, or at such other addresses provided by the Parties in writing:

DEVELOPER:                                       Attn: Mehrdad Moayed  
MM Mesquite 50, LLC  
1800 Valley View Lane, Suite 300  
Farmers Branch, TX 75234

Copy to:   Travis Boghetich  
Boghetich Law, PLLC  
1800 Valley View Lane, Suite 300  
Farmers Branch, TX 75234

CITY:    City of Mesquite, TX  
City Manager's Office  
1515 N. Galloway Ave.  
Mesquite, TX 75149

Copy to:   City of Mesquite, TX  
City Attorney  
1515 N. Galloway Ave.  
Mesquite, TX 75149

(h) **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

(i) **Applicable Law.** This Agreement is made and shall be construed and interpreted under the laws of the State of Texas without regard to any conflict of law rules, and venue shall lie in Dallas County, Texas.

(j) **Severability.** In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

(k) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument. The City Manager is hereby authorized to execute this Agreement on behalf of the City.

(l) **Independent Parties.** Nothing herein shall be construed as creating a partnership or joint enterprise between the City and Developer. Furthermore, the Parties acknowledge and agree that the doctrine of respondeat superior shall not apply between the City and Developer, nor between the City and any officer, director, member, agent, employee, contractor, subcontractor, licensee, or invitee of Developer.

(m) **No Rights Conferred on Others.** Nothing in this Agreement shall confer any right upon any person other than the City and Developer and no other person is considered a third party beneficiary to this Agreement.

(n) **Approval Not Guaranteed.** Nothing contained in this Agreement shall be construed as obligating the City to approve any application required for development of the Property that is not in conformity with the City's adopted development regulations.

(o) **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transaction contemplated herein.

(p) **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor will there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

(q) **Annual Appropriation.** The Grant shall be subject to annual appropriation by the City Council in the annual budget and the City's obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas.

(r) **No Acceleration.** All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

12. **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and

provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

13. **Undocumented Workers.**

(a) **Covenant Not to Employ Undocumented Workers.** The Developer hereby certifies that the Developer and each branch, division, and department of the Developer does not employ any Undocumented Workers and the Developer hereby covenants and agrees that the Developer and each branch, division and department of the Developer will not knowingly employ any Undocumented Workers during the Term of this Agreement.

(b) **Covenant to Notify City of Conviction for Undocumented Workers.** The Developer further hereby covenants and agrees to provide the City with written notice of any conviction of the Developer or any branch, division or department of the Developer of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction.

(c) **Repayment of Grant in Event of Conviction for Employing Undocumented Workers.** If, after receiving the Grant under the terms of this Agreement, the Developer or a branch, division or department of the Developer is convicted of a violation under 8 U.S.C. §1324a (f), the Developer shall pay to the City, not later than the 120th day after the date the City notifies the Developer of the violation, an amount equal to the Grant plus interest at the rate equal to the lesser of: (i) the maximum rate allowable by law; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of the Grant from the date the Grant was paid by the City to the Developer until the date repaid by the Developer to the City and such interest rate shall adjust periodically as of the date of any change in the maximum rate allowable by law.

(d) **Limitation on Grant.** The City shall have no obligation to pay the Grant if the Developer or any branch, division or department of the Developer is convicted of a violation under 8 U.S.C. §1324a (f).

(e) **Remedy for Violation.** The City shall have the right to exercise all remedies available by law to collect any sums due by the Developer to the City pursuant to Section 13 of this Agreement including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

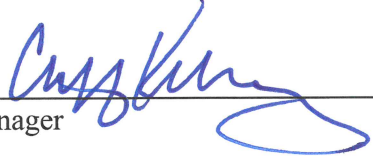
(f) **Limitation.** The Developer is not liable for a violation of 8 U.S.C. §1324a (f) by a subsidiary, affiliate, or franchisee of the Developer, or by a person with whom the Developer contracts.

(g) **Survival.** The terms, provisions, covenants, agreements and obligations of the Developer and the rights and remedies of the City set forth in Section 13 of this Agreement shall expressly survive the expiration or termination of this Agreement.

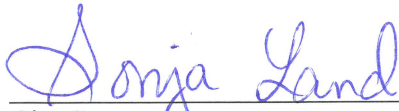
*Signature pages follow*

EXECUTED on this 3 day of Sept., 2019.

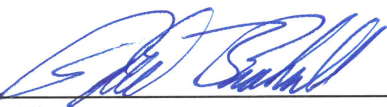
**CITY OF MESQUITE, TEXAS**

By:   
City Manager

ATTEST:

  
City Secretary

APPROVED AS TO FORM:

By:   
City Attorney


EXECUTED on this 5 day of August, 2019.

**DEVELOPER:**

MM Mesquite 50, LLC,  
a Texas limited liability company

By: MMM Ventures, LLC,  
a Texas limited liability company  
Its Manager

By: 2M Ventures, LLC,  
a Delaware limited liability  
company  
Its Manager

By:   
Name: Mehrdad Moayed  
Its: Manager