

RESOLUTION NO. 12-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) FOR SUCH PURPOSES WITH FIRST TEXAS HOMES, INC., FOR PROPOSED NEW RESIDENTIAL CONSTRUCTION IN MESQUITE, TEXAS, AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (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, the City Council has been presented with a proposed agreement providing economic incentives to First Texas Homes, Inc. (the “**Company**”), for proposed new residential construction in the City, a copy of said agreement being attached hereto as Exhibit A and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement 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. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, will benefit the City 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.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

SECTION 5. That the City Manager is further hereby authorized to administer the 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 Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the 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 Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 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.

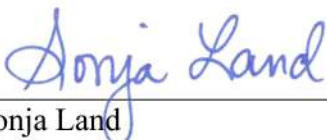
SECTION 6. That the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph or section of this Resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, 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 15th day of March 2021.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

**CHAPTER 380 GRANT AGREEMENT BY
AND BETWEEN THE CITY OF MESQUITE, TEXAS
AND FIRST TEXAS HOMES, INC.**

This **CHAPTER 380 GRANT AGREEMENT** ("Agreement") is made by and between The City of Mesquite, Texas, a municipal corporation ("City"), and First Texas Homes, Inc., a Texas corporation (the "Company"), (each a "Party" and collectively, the "Parties"), acting by and through their respective authorized officers and representatives.

WHEREAS, the City Council of the City of Mesquite, Texas ("City Council") has investigated and determined that it is in the best interest of the City and its citizens to encourage programs, including programs for making loans and grants of public money to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380, Texas Local Government Code, as amended ("Chapter 380"); and

WHEREAS, the Company will be engaged in the business of purchasing building materials for its use on construction projects within the City; and

WHEREAS, the Company has advised that it would like to partner with the City, and that a contributing factor that would induce the Company to purchase items using a Texas Direct Payment Permit and generate economic development and local use tax revenue for the City, that would otherwise not be available to the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Company desires to purchase and use new building materials within the City that will generate additional economic development and use tax revenue for the City; and

WHEREAS, the City Council has investigated and determined that the Company meets the criteria for providing the grants (hereinafter defined), pursuant to Chapter 380, based on, among other things, the Company: (i) acquiring properties for development, and constructing improvements; (ii) adding taxable improvements to real property in the City; and (iii) creating employment opportunities for the citizens of Mesquite ("Approved Project"); and

WHEREAS, the City has concluded that the Approved Project qualifies for a grant under Chapter 380; and

WHEREAS, with the approval of this Agreement, the City hereby establishes a program authorized by Chapter 380 to encourage and induce the generation of local use tax; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.01 For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Agreement" shall mean this Chapter 380 Grant Agreement, together with all exhibits, schedules, and attachments that are attached to this Agreement from time to time, if any.

"City" shall mean The City of Mesquite, Texas.

"Commencement Date" shall mean March 15, 2021.

"Company" shall mean First Texas Homes, Inc.

"Effective Date" shall mean March 15, 2021.

"Direct Payment Permit" also referred to herein as a "Texas Direct Payment Permit" shall mean that permit issued by the State of Texas authorizing Company to self-assess and pay applicable state and local use taxes directly to the State of Texas related to selected portions of Company's taxable purchases. Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter O, Rule § 3.288 defines the requirements and responsibilities of Texas Direct Payment Permit holders along with any amendments, permutations, or recodifications of such Code or Rules whether renaming such permits or otherwise modifying such provisions.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of Company's existence as a going business, insolvency, appointment of receiver for any part of a Company's property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company and in the event such proceeding is not voluntarily commenced by Company, such proceeding is not dismissed within ninety (90) business days after the filing thereof.

"Force Majeure" shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorism, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of the Party.

"Grant Period" shall mean consecutive six (6) month periods during the term of this Agreement, except that the first Grant Period shall begin on the Effective Date and continue

through and include the last day of June 2021 following the Effective Date. For illustration purposes, assume the Effective Date is March 15, 2021 then the first Grant Period would begin on March 15, 2021 and continue through and include June 30, 2021. The next Grant Period would begin on July 1, 2021 and continue through and include December 31, 2021. The final Grant Period for the initial 10-year term of the Agreement would be from January 1, 2031 and end on March 14, 2031.

"Impositions" shall mean all valid taxes, assessments, use and occupancy taxes, sales taxes, charges, ad valorem taxes, excises, license and permit fees, and other charges by public or governmental authority, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company, or any property or any business owned by Company within City.

"Program" shall mean the economic incentive program established by the City pursuant to Chapter 380 of the Texas Local Government Code together with any amendments, permutations, or recodifications of such Code provisions whether renaming such economic incentive or other modifications thereof.

"Program Grant" shall mean the periodic payments paid by the City to the Company in accordance with Article 3 of this Agreement.

"Taxable Items" shall have the same meaning assigned by Sections 151.010 and 151.0101, TEX. TAX CODE, as amended.

"Use Tax Certificate" shall mean a certificate or other statement in a form reasonably acceptable to the City setting forth the Company's collection of use tax imposed by and received by the City from the State of Texas, for the use of Taxable Items by Company in the City for the applicable calendar month during a Grant Period which are to be used to determine Company's eligibility for a Grant, together with such supporting documentation required herein, and as City may reasonably request.

"Use Tax Receipts" shall mean the City's net receipts from the State of Texas from the collection of one percent (1%) general City use tax imposed by the City pursuant to Chapter 321 of the Texas Tax Code, attributed to the collection of use tax by Company associated with the issuance of Company's Texas Direct Payment for Taxable Items used or consumed in the City.

ARTICLE II TERM

2.01 Term. The term of this Agreement shall begin on the Effective Date and continue for a ten (10) year period.

2.02 This Agreement shall remain in effect until City has made the Program Grants set forth in Article 3 of this Agreement, or until otherwise terminated under the provisions of this Agreement.

2.03 This Agreement may be extended for an additional period of time on terms mutually acceptable to both Parties by a written agreement executed by both Parties.

ARTICLE III ECONOMIC DEVELOPMENT GRANT

3.01 Grant. Subject to the Company's continued compliance with (a) all of the terms and conditions of this Agreement, and (b) all of the City's codes, rules and regulations regarding the development of property within the City's corporate limits and its extraterritorial jurisdiction, the City agrees to provide Company with an economic development grant from lawful available funds payable as provided herein in an amount equal to 80% of the Use Tax Receipts, as previously defined herein (the "Grant"). The Grant will be paid semi-annually at the end of June and the end of December with the potential exception of the final Grant Period during the ten (10) year period following the execution of the Agreement, commencing March 15, 2021. The Grant will never include any monies the Company pays or owes to the State of Texas for any penalties for late payments, failures to report in a timely manner, and the like, related to the Use Tax Receipts.

3.02 Grant Payment. Subject to the conditions precedent provided in Article IV of this Agreement, City shall pay the Grant for the applicable Grant Period within forty-five (45) days after City's receipt of a Use Tax Certificate from Company following the end of each Grant Period, pursuant to Section 4.01 of this Agreement, and after receipt of all of the Use Tax Receipts paid by Company during the applicable Grant Period. Company shall submit Use Tax Certificates to City within thirty (30) days following the end of the applicable Grant Period, beginning with the first Grant Period. For illustration purposes, assume the first Grant Period begins on March 15, 2021 and continues through and includes June 30, 2021. Company would submit a Use Tax Certificate to City for the first Grant Period by July 30, 2021 and City would pay the first Grant within forty-five (45) days after receipt of the Use Tax Certificate and after receipt of all of the Use Tax Receipts paid by Company during the applicable Grant Period. Further assume that the Use Tax Receipts for the first Grant Period equal Five Thousand Dollars (\$5,000.00) received by the City, then the amount of the first Grant would be Four Thousand Dollars (\$4,000.00).

3.03 Amended Returns and Audits. In the event the Company files an amended use tax return, or report, or if additional use tax is due and owing, as a result of an audit conducted by the State of Texas that increases the Use Tax Receipts for a previous period covered within the term of this Agreement, the Grant payment for the Grant Period immediately following such State approved amendment shall be adjusted accordingly, provided the City must have received the Use Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Company shall provide City with a copy of such amended use tax report, tax return or audit adjustment, and the approval thereof by the State of Texas.

3.04 Refunds. In the event the State of Texas determines that the City erroneously received Use Tax Receipts, or that the amount of use tax paid to the City exceeds the correct amount of use tax for a previous Grant paid to the Company, the Company shall, within thirty (30) days after receipt of notification thereof from the City specifying the amount by which such Grant exceeded the amount to which the Company was entitled pursuant to such State of Texas determination, pay such amount to the City. The City may at its option adjust the Grant payment for the Grant Period immediately following such State of Texas determination to deduct therefrom the amount of the

overpayment. As a condition precedent to payment of such refund, the City shall provide Company with a copy of such determination by the State of Texas.

ARTICLE IV DOCUMENTATION SUPPORTING THE ECONOMIC DEVELOPMENT GRANT

The conditions contained in this Article IV are conditions precedent to the City's obligation to make any Grant payment.

4.01 Use Tax Certificate. During the term of this Agreement, the Company shall within thirty (30) days after the end of each Grant Period, provide the City with a Use Tax Certificate for the applicable Grant Period. The City shall have no duty to calculate the Use Tax Receipts or determine Company's entitlement to any Grant for a Grant Period, or pay any Grant during the term of this Agreement until such time as Company has provided the City a Use Tax Certificate for such Grant Period and the City has received the actual Use Tax Receipts from the State of Texas attributable to such calendar months within the Grant Period. Company shall provide such additional documentation as may be reasonably requested by City to evidence, support and establish the use tax paid directly to the State of Texas pursuant to Company's Direct Payment Permit. The Use Tax Certificate for each Grant Period shall at a minimum contain, include or be accompanied by the following:

- a. A copy of all Texas Direct Payment Permit and self-assessment use tax returns and reports during the applicable Grant Period, use tax audit assessments or credits, including amended use tax returns or reports, filed by the Company during the Grant Period showing use tax paid directly to the State of Texas related to Company's operations for the Grant Period; and
- b. Information concerning any refund or credit received by the Company of use tax paid by the Company which has previously been reported by the Company as use tax paid for a previous Grant Period within the term of this Agreement.

Company will provide to City the Use Tax Certificates from time to time pursuant to the terms of this Agreement, which are confidential ("Confidential Information") and, except as otherwise provided herein or required by law, may not be disclosed to a third party without the Company's consent. To the extent that any disclosure of the Confidential Information may be required by law, City will use reasonable efforts to inform Company of the request in sufficient time for Company to assert any objection it may have to such disclosure to an appropriate judicial or administrative body.

4.02 As a condition to the payment of any Grant hereunder, City must have received a Use Tax Certificate for the months within the Grant Period for which payment of a Grant is requested, and City must have received the actual Use Tax Receipts for all calendar months within the Grant Period. If Company fails to submit the Use Tax Certificate contemplated by Section 4.01 before the end of the next Grant Period, the Company's right to receive the Grant Payment for the earlier Grant Period shall be forfeited and City shall have no obligation to make a Grant Payment for such Grant Period.

4.03 The Company intends to issue its Texas Direct Payment Permit to specific suppliers or vendors that provide large quantities of building materials or other tangible personal property.

4.04 The Company shall provide the City with a true and correct copy of its Texas Direct Payment Permit, which permit shall be kept in full force and effect throughout the term of the Agreement.

4.05 Company or the City shall not have an uncured material breach or default of this Agreement. Company shall be in compliance with all City codes, rules and regulations regarding development of property.

4.06 To the extent Company purchases taxable items from suppliers or vendors having a sales tax outlet situated within the City's corporate limits, the Company shall pay sales and use taxes to such supplier within the City's corporate limits without regard to the location from which such purchases are shipped to Company; and such purchases shall not be eligible for consideration in the calculation of any Program Grant.

ARTICLE V TERMINATION

5.01 This Agreement may be terminated upon any one of the following:

- (a) by mutual written agreement of the Parties;
- (b) by City or Company, respectively, if the other Party defaults or breaches any of the terms or conditions of this Agreement in any material respect and such default or breach is not cured within thirty (30) days after written notice thereof by the City or Company, as the case may be;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency;
- (e) by City or Company, respectively, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable;
- (f) by Company, if the City does not timely pay any applicable Grant amount as required herein or fails to cure this breach within an additional 30 days and so long as the Company is not in default, or;
- (g) expiration of the term, or any subsequent renewal of the term to which the Parties may agree in writing signed by authorized representatives.

The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the termination of this Agreement except for any rights, responsibilities and/or liabilities that accrued prior to such termination.

ARTICLE VI INDEMNIFICATION

THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, OFFICIALS, REPRESENTATIVES, CONSULTANTS, AGENTS AND EMPLOYEES (COLLECTIVELY, FOR THE PURPOSE OF THIS PARAGRAPH, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, OVER-PAID OR INCORRECTLY ALLOCATED USE TAX RECEIPTS ATTRIBUTED TO THE SALE AND/OR USE OF TAXABLE ITEMS BY COMPANY CONSUMMATED WITHIN THE CORPORATE BOUNDARIES AND EXTRATERRITORIAL JURISDICTION OF THE CITY FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT OR DURING ANY TAX REPORTING PERIOD (COLLECTIVELY, A "CLAIM"); IT BEING THE INTENTION OF THE PARTIES THAT THE COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY USE TAX GRANTS PAID TO THE COMPANY HEREIN BY THE CITY THAT INCLUDES USE TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WERE PAID ERRONEOUSLY, COLLECTED, DISTRIBUTED, OR ALLOCATED TO THE CITY. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM THE ERRORS OR OMISSIONS OF THE CITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM COMPANY TO THE CITY TO PERFORM OBLIGATIONS CREATED BY THIS PARAGRAPH.

ARTICLE VII MISCELLANEOUS

7.01 Binding Agreement. The terms and conditions of this Agreement are binding upon the Parties to this Agreement and their respective successors and permitted assigns. This Agreement may not be assigned without the express written consent of City, which consent shall not be unreasonably withheld or delayed.

7.02 Limitation on Liability. It is understood and agreed between the Parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. **THE COMPANY AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM ALL SUCH CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES,**

INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER BY A THIRD PARTY ARISING OUT OF THE COMPANY'S PERFORMANCE OF THE CONDITIONS UNDER THIS AGREEMENT. The Parties agree that in a suit against the City for breach of this Agreement, the total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by the City under this Agreement. The recovery of damages against a Party may not include consequential or exemplary damages. The Parties may not recover attorneys' fees and Company is not entitled to specific performance or injunctive relief against the City. An uncured default and breach by any Party shall not entitle any non-defaulting Party to recovery of any monetary damages other than an amount of any grant allegedly owed under Articles III and IV of this Agreement and expressly excluding lost profits, all other consequential damages and exemplary damages.

7.03 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the Parties.

7.04 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.05 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered sent via fax.

If intended for City, to:

Attn: Cliff Keheley
Mesquite City Manager
City of Mesquite
1515 N. Galloway Ave.
Mesquite, TX 75149

With a copy to:

Attn: City Attorney
City of Mesquite
1515 North Galloway Ave.
Mesquite, TX 75149

If intended for the Company:

Attn: Kristy Murday
Controller
First Texas Homes, Inc.
500 Crescent Court, Suite 350
Dallas, TX 75201

With a copy to:

Attn: John D. Sloan, Jr.
Sloan Attorneys
Two Turtle Creek
3838 Oak Lawn, Suite 1200
Dallas, TX 75219

7.06 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement.

7.07 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to Force Majeure, to perform its obligations under this Agreement, then the obligations affected by the Force Majeure shall be temporarily suspended. Within ten (10) days after the occurrence of a Force Majeure, the Party claiming the right to temporarily suspend its performance, shall give notice to the other Party that includes a detailed explanation of the Force Majeure, a description of the action that will be taken to remedy the Force Majeure and resume full performance at the earliest possible time, and the length of time needed to resume full performance. The other Party may object in writing to the length of time claimed to be needed to resume performance by the Party suffering the event of Force Majeure if it provides a commercially reasonable explanation regarding how full performance could be reasonably resumed at an earlier date, in which case full performance shall resume at the earlier date.

7.08 Governing Law. The laws of the State of Texas shall govern the Agreement; and this Agreement is fully performable in Mesquite, Dallas County, Texas with exclusive venue for any action concerning this Agreement being in a court of competent jurisdiction in Dallas County, Texas.

7.09 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

7.10 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or

unenforceable, a provision shall 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.

7.11 Recitals. The recitals to this Agreement are incorporated herein.

7.12 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.

7.13 Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this Agreement.

7.14 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument and any such counterparts shall be deemed to be incorporated herein.

7.15 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

7.16 Governmental Immunity. The Parties agree that the City has not waived its governmental immunity by entering into and performing its obligations under this Agreement.

7.17 Dispute Resolution. Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any Party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The Parties shall endeavor to resolve their claims by mediation. City and Company shall share the costs of mediation equally. The mediation shall be held in Mesquite, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

7.18 No Israeli Boycott. Pursuant to Section 2271.002, Texas Government Code, the Company hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of the Agreement. As used in the immediately preceding sentence, "boycott Israel" shall have the meaning given such term in Section 2271.001, Texas Government Code.

7.19. Foreign Terrorist Organizations. The Company hereby represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the

immediately preceding sentence, “foreign terrorist organization” shall have the meaning given such term in Section 2252.151, Texas Government Code.

7.20 Ethics Disclosure. Company represents that it has completed a Texas Ethics Commission (“TEC”) form 1295 (“Form 1295”) generated by the TEC’s electronic filing application in accordance with the provisions of Texas Government Code 2252.908 and the rules promulgated by the TEC. The Parties agree that, with the exception of the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295. The information contained in the Form 1295 has been provided solely by the Company and the City has not verified such information.

7.21 No Permit. This Agreement does not constitute a permit pursuant to Chapter 245 of the Texas Local Government Code and or any City code or regulation and does not vest any rights to the Company pursuant thereto. The City does not, by entering into this Agreement, concede or agree that there are any developer rights or obligations arising under Chapter 245 of the Texas Local Government Code and the City reserves all rights and defenses against any such assertion.

7.22 Authority and Enforceability. The City represents and warrants that this Agreement has been duly adopted by official action of the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. Company represents and warrants that this Agreement has been approved by appropriate action of Company and that the individual executing this Agreement on behalf of Company has been duly authorized to do so.

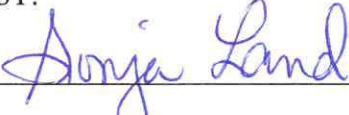
[SIGNATURE PAGES FOLLOW]

EXECUTED as of the 16 day of March 2021.

THE CITY OF MESQUITE, TEXAS

By: 
Cliff Keheley, City Manager

ATTEST:

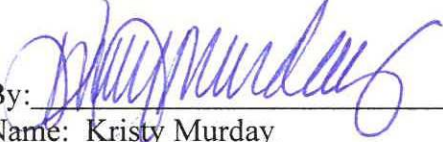
By: 
Sonja Land, City Secretary

APPROVAL AS TO FORM:

By: 
City Attorney

EXECUTED as of the 16 day of March 2021.

By: First Texas Homes, Inc.
a Texas corporation

By: 
Name: Kristy Murday
Title: Controller

ACKNOWLEDGMENTS

STATE OF TEXAS §
CITY OF MESQUITE §

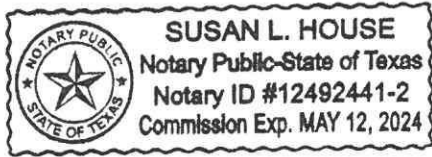
This instrument was acknowledged before me on the 16th day of March 2021 by Cliff Keheley, City Manager of The City of Mesquite, Texas, on behalf of said City.

Susan L. House

Name: Susan L. House

Notary Public, State of Texas

My commission expires: May 12, 2024



STATE OF TEXAS §
CITY OF DALLAS §

This instrument was acknowledged before me on the 2nd day of March 2021 by Kristy Murday, Controller of First Texas Homes, Inc., a Texas corporation, on behalf of said company.

Amy Clark

Name: Amy CLARK

Notary Public - State of Texas

My commission expires: March 28, 2023

