

RESOLUTION NO. 74-2021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE A FOURTH AMENDMENT TO THE IRON HORSE DEVELOPMENT AGREEMENT TO (i) AMEND SECTION 2.02(a)(ii) "PROJECT OVERVIEW – IRON HORSE DEVELOPMENT" TO REDUCE THE MINIMUM SQUARE FOOTAGE OF RESTAURANT AND RETAIL SPACE FROM 130,000 SQUARE FEET TO 126,000 SQUARE FEET, AND (ii) AMEND SECTION 6.04(f) "ZONING OF THE PROPERTY" TO REDUCE THE MINIMUM SQUARE FOOTAGE OF AIR CONDITIONED RESTAURANT SPACE AND ALLOW RETAIL SPACE TO SATISFY THE SQUARE FOOTAGE MINIMUM, THE REDUCTION BEING FROM 30,000 SQUARE FEET TO 26,000 SQUARE FEET, TO ESTABLISH A COMMENCEMENT AND COMPLETION DATE FOR SUCH IMPROVEMENTS AND TO PROVIDE A PENALTY FOR FAILURE TO MEET SAID COMPLETION DATE, FOR PROPERTY COMMONLY REFERRED TO AS "IRON HORSE VILLAGE" AND BEING GENERALLY LOCATED NORTH OF RODEO DRIVE, SOUTH OF SCYENE ROAD (ALSO KNOWN AS STATE HIGHWAY 352), EAST OF STADIUM DRIVE, AND WEST OF RODEO CENTER BOULEVARD WITHIN THE CORPORATE LIMITS OF THE CITY OF MESQUITE IN DALLAS COUNTY, TEXAS.

WHEREAS, on November 19, 2018, the City Council of the City of Mesquite, Texas ("**City Council**"), adopted Resolution No. 69-2018, approving a Development Agreement effective November 19, 2018, between the City of Mesquite, Texas (the "**City**"), and MM Mesquite 50, LLC, regarding the development of certain real property within the Iron Horse Public Improvement District created by the City on February 4, 2019, by Resolution No. 15-2019 (the "**PID**") and being generally located north of Rodeo Drive, south of Scyene Road (also known as State Highway 352), east of Stadium Drive, and west of Rodeo Center Boulevard within the corporate limits of the City of Mesquite in Dallas County, Texas (the "**Agreement**"); and

WHEREAS, on March 18, 2019, the City Council adopted Resolution No. 26-2019, approving the First Amendment to the Agreement which amended the definition of "Public Improvement Financing Date," to extend the date for the City to approve a bond purchase agreement and sell PID bonds to July 1, 2019; and

WHEREAS, on June 3, 2019, the City Council adopted Resolution No. 45-2019, approving the Second Amendment to the Agreement which amended Section 3.03 "Distribution of PID Bond Proceeds"; and

WHEREAS, on August 17, 2020, the City Council adopted Resolution No. 34-2020, approving the Third Amendment to the Agreement which (i) amended certain definitions, (ii) amended Section 2.02(a) "Project Overview – Iron Horse Development," (iii) amended Section

6.04(a) "Zoning of the Property," and (iv) amended and replaced Exhibit C "Concept Plan," Exhibit I "Development Standards," and Exhibit K "Fencing Plan," to allow an amenity center and a convenience store with fuel sales, to modify the screening wall requirements, and to provide that the property more particularly described in the Agreement to be developed in compliance with the Concept Plan and the Development Standards, as amended; and

WHEREAS, the City Council has been presented with a Fourth Amendment to the Agreement ("**Fourth Amendment**"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, to (i) amend Section 2.02(a)(ii) "Project Overview – Iron Horse Development" to reduce the minimum square footage of restaurant and retail space from 130,000 square feet to 126,000 square feet, and (ii) amend Section 6.04(f) "Zoning of the Property" to reduce the minimum square footage of air conditioned restaurant space and allow retail space to satisfy the square footage minimum, the reduction being from 30,000 square feet to 26,000 square feet, to establish a commencement and completion date for such improvements and to provide a penalty for failure to meet said completion date for property commonly referred to as "Iron Horse Village"; and

WHEREAS, the City Council is of the opinion that the Fourth Amendment is in the best interest of the City and will benefit the City and its citizens.

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

SECTION 1. That the statements, facts, findings, and recitals set forth above are hereby found and declared to be true and correct and are incorporated into this resolution and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council hereby approves the Fourth Amendment and authorizes the City Manager to finalize and execute the Fourth Amendment.

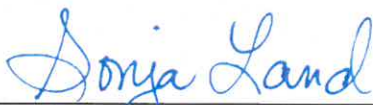
SECTION 3. That this resolution shall take effect immediately upon passage of this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 1st day of November 2021.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT A

**FOURTH AMENDMENT TO THE
IRON HORSE DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS, AND
MM MESQUITE 50, LLC**

FOURTH AMENDMENT TO IRON HORSE DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO IRON HORSE DEVELOPMENT AGREEMENT (this “**Fourth Amendment**”) is made by and between the **City of Mesquite, Texas**, a Texas home-rule municipality (the “**City**”) and **MM Mesquite 50, LLC**, a Texas limited liability company (the “**Developer**”) to be effective November 1, 2021 (the “**Effective Date**”).

RECITALS:

WHEREAS, the City and Developer are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”; and

WHEREAS, the City and the Developer entered into that certain Iron Horse Development Agreement dated effective November 19, 2018, recorded as Document No. 201800326576, Official Public Records, Dallas County, Texas (the “**Original Agreement**”), as amended by: (i) that certain First Amendment to Iron Horse Development Agreement between the City and the Developer dated effective March 18, 2019, recorded as Document No. 202000007638, Official Public Records, Dallas County, Texas (the “**First Amendment**”), (ii) that certain Second Amendment to Iron Horse Development Agreement between the City and the Developer dated effective May 20, 2019, approved by the City Council pursuant to Resolution No. 45-2019 on June 3, 2019 (the “**Second Amendment**”), and (iii) that certain Third Amendment to Iron Horse Development Agreement between the City and the Developer dated effective August 3, 2020, approved by the City Council pursuant to Resolution No. 34-2020 on August 17, 2020 (the “**Third Amendment**”) (the Original Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, being hereinafter collectively referred to as the “**Agreement**”) relating to the development of certain real property within the Iron Horse Public Improvement District created by the City on February 4, 2019 by Resolution No. 15-2019, and

WHEREAS, the recitals contained in this Fourth Amendment: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Fourth Amendment; and (c) reflect the final intent of the Parties with regard to the subject matter of this Fourth Amendment; and

WHEREAS, the Parties acknowledge and agree that, except to the extent amended herein, all provisions and terms contained in the Agreement remain in full force and effect; and

WHEREAS, the City Council passed and approved the Agreement on November 19, 2018; and

WHEREAS, the City Council passed and approved the First Amendment to the Agreement on March 18, 2019; and

WHEREAS, the City Council passed and approved the Second Amendment to the Agreement on June 2, 2019; and

WHEREAS, the City Council passed and approved the Third Amendment to the Agreement on August 17, 2020; and

WHEREAS, the Parties desire to amend the Agreement to amend Sections 2.02(a)(ii) and 6.04(f) relating to the retail and restaurant space.

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Fourth Amendment, and for good and valuable consideration the receipt and adequacy of which are acknowledged and agreed, the Parties agree as follows:

1. Defined Terms. All capitalized terms used in this Fourth Amendment, to the extent not otherwise expressly defined herein, shall have the meanings ascribed to them in the Agreement.

2. Amendment to Section 2.02(a)(ii). The parties agree that Section 2.02(a)(ii) of the Agreement shall be replaced with the following language:

“126,000 sq. ft. restaurant/retail/space”

3. Amendment to Section 6.04(f). The Parties agree that Section 6.04(f) of the Agreement shall be replaced with the following language:

“On or before December 31, 2021, Developer shall have applied to the City for grading permits for at least 26,000 air conditioned square feet of restaurant and retail space. Developer shall correct any application deficiencies within thirty (30) days of notice of such deficiency by the City. Commencement of Construction must have occurred on 26,000 air conditioned square feet of restaurant and retail space on the later of January 1, 2022 or approval of the grading permits. The 26,000 air conditioned square feet of restaurant and retail space must be Completed within twenty 20 months after the later of Commencement of Construction or approval of the grading permits. If the 26,000 square feet of restaurant and retail space is not Completed within such time period, Developer shall pay a \$500 per day fee/penalty to the City, commencing on the first day after expiration of said twenty (20) months and continuing until the 26,000 air conditioned square feet of restaurant and retail space is Completed, to be paid to the City on a monthly basis and due on or before the first day of each month. For purposes of this section, “Completed” shall mean that the Developer has obtained a temporary certificate of occupancy for at least 26,000 air conditioned square feet of restaurant and retail space.

4. Miscellaneous.

(a) This Fourth Amendment amends the Agreement in no other manner except as expressly set forth herein. Except as amended herein, the terms, provisions, agreements, covenants and conditions of the Agreement shall continue in full force and effect. In the event of a conflict between this Fourth Amendment and the Agreement, the terms of this Fourth Amendment shall control.

(b) This Fourth Amendment together with the Agreement shall constitute the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this Fourth Amendment and the Agreement. This Fourth Amendment and the Agreement shall not be modified or amended except in writing signed by the Parties.

(c) This Fourth Amendment may be executed in one (1) or more counterparts, each of which when taken together shall constitute one and the same instrument.

(d) The City represents and warrants that the individual executing this Fourth Amendment on behalf of the City has been duly authorized to do so. Developer represents and warrants that this Fourth Amendment has been approved by appropriate action of Developer, and that each individual executing this Fourth Amendment on behalf of Developer has been duly authorized to do so.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment as of the Effective Date.

DEVELOPER:

MM Mesquite 50, LLC,
a Texas limited liability company

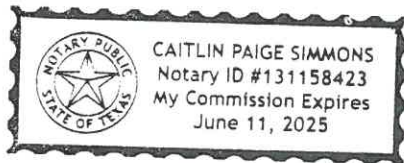
By: MMM Ventures, LLC,
a Texas limited liability company
Its Manager

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

By: Mehrdad Moayed
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 27 day of October, 2021 by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of MM Mesquite 50, LLC, a Texas limited liability company on behalf of said company.



[SEAL]

Caitlin Paige Simmons
Notary Public, State of Texas

CITY

CITY OF MESQUITE, TEXAS

ATTEST:

Sonja Land
Name: Sonja Land
Title: City Secretary

By: Cliff Keheley
Name: Cliff Keheley
Title: City Manager

APPROVED AS TO FORM:

[Signature]
City Attorney or Designee

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 4 day of November, 2021, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a home-rule municipality, on behalf of said home-rule municipality.

Connie L. Little
Notary Public, State of Texas

