

RESOLUTION NO. 32-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TIRZ REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MESQUITE, TEXAS, THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER 15, CITY OF MESQUITE, TEXAS (SOLTERRA) (THE “TIRZ”) AND HC SOLTERRA, LLC, REGARDING THE REIMBURSEMENT OF PROJECT COSTS FOR PUBLIC IMPROVEMENTS WITHIN THE TIRZ.

WHEREAS, on October 19, 2020, and by Resolution No. 53-2020, the City Council approved a Solterra Development Agreement between the City of Mesquite, Texas (“**City**”) and HC Solterra, LLC (“**Developer**”) relating to the development of approximately 1,424 acres in the City as a master-planned development consisting of primarily residential uses to be known as Solterra (the “**Solterra Development**”); and

WHEREAS, the aforementioned Solterra Development Agreement was amended by the First Amendment to Development Agreement and Second Amendment to Development Agreement approved by the City Council on March 15, 2021, and February 20, 2023, by Resolution Nos. 11-2021 and 04-2023, respectively, all of which are incorporated herein by reference (collectively, the “**Solterra Development Agreement**”); and

WHEREAS, the City created Reinvestment Zone Number 15, City of Mesquite, Texas (Solterra) (the “**TIRZ**”), and established a Board of Directors for the TIRZ (the “**Board**”) to promote development or redevelopment in the TIRZ pursuant to Ordinance No. 4869, approved by the City Council on June 7, 2021, and incorporated herein by reference, in accordance with the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended (the “**Act**”); and

WHEREAS, the TIRZ encompasses approximately 1,920 acres of land and being the property described and depicted in Exhibits A and B to Ordinance No. 4869 (the “**Property**”) and includes within its boundaries the Solterra Development; and

WHEREAS, in order to incentivize the development of the Property and encourage and support economic development within the boundaries of the TIRZ and to promote employment, the City desires to facilitate the development of the Property through the financing of certain Public Improvements; and

WHEREAS, the completion of the Public Improvements will facilitate and encourage development both within and outside the TIRZ that will significantly enhance growth and will generate tax revenues to the City; and

WHEREAS, the completion of the Public Improvements will promote state and local economic development and will stimulate business and commercial activity in the City, Dallas County and the State, and will contribute to the development and diversification of the economy of the State, and to the development and expansion of the commerce of the State; and

Economic Development / TIRZ No. 15 Reimbursement Agreement – Solterra PID

July 17, 2023

Page 2 of 2

WHEREAS, the City has an interest in expanding the tax base which accomplishes a public purpose; and

WHEREAS, on July 17, 2023, the Board approved a project plan and reinvestment zone financing plan for the TIRZ and recommended approval of such project plan and reinvestment zone financing plan to the City Council for approval; and

WHEREAS, on July 17, 2023, the City Council approved a project plan and reinvestment zone financing plan for the TIRZ by Ordinance No. 5035 (the “**TIRZ Project and Financing Plan**”), incorporated herein by reference; and

WHEREAS, the TIRZ Project and Financing Plan identifies the Public Improvements as projects eligible for reimbursement by the TIRZ; and

WHEREAS, the City Council has been presented with a proposed TIRZ Reimbursement Agreement between the City, the Board, and the Developer to use a portion of the TIRZ Revenues to reimburse the Developer for Public Improvements Project Costs in connection with the design, construction and installation of the Public Improvements under the terms and subject to the conditions set forth in the TIRZ Reimbursement Agreement attached hereto as Exhibit 1 and made a part hereof for all purposes (the “**TIRZ Reimbursement Agreement**”); and

WHEREAS, the Public Improvements are projects that qualify for reimbursement under the TIRZ Act, the Developer will be responsible for the completion of the Public Improvements and will convey such Public Improvements to the City in exchange for payment or reimbursement of the certain costs relating to the Public Improvements as provided in the TIRZ Reimbursement Agreement; and

WHEREAS, the City and the Board desire to dedicate a portion of the TIRZ Revenues to reimburse the Developer for Public Improvements Project Costs to facilitate the development of the Property under the terms and subject to the conditions set forth in the Solterra Development Agreement and the TIRZ Reimbursement Agreement; and

WHEREAS, the Board desires to enter into the TIRZ Reimbursement Agreement with the City and the Developer; and

WHEREAS, the Board found and determined that approval of the TIRZ Reimbursement Agreement by the Board and the Board’s recommendation to the City Council to approve the Reimbursement Agreement are in the best interest of the TIRZ and the citizens of the City; and

WHEREAS, the City Council finds that the TIRZ Reimbursement Agreement and the dedication of a portion of the TIRZ Revenues to reimburse the Developer for Public Improvements Project Costs under the terms and subject to the conditions set forth in the Solterra Development Agreement and the TIRZ Reimbursement Agreement are necessary to implement the TIRZ Project and Financing Plan; and

Economic Development / TIRZ No. 15 Reimbursement Agreement – Solterra PID

July 17, 2023

Page 3 of 2

WHEREAS, the City Council finds and determines that the TIRZ Reimbursement Agreement is in the best interest of the TIRZ and the citizens of the City; and

WHEREAS, pursuant to the TIRZ Act, the City Council and the Board have the authority to dedicate the use of City Tax Increment to pay for or reimburse certain costs of the Public Improvements; and

WHEREAS, pursuant to the TIRZ Act, the City Council and the Board have the authority to enter into the TIRZ Reimbursement Agreement and to implement the TIRZ Project and Financing Plan.

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

SECTION 1. The recitals set forth in the preamble of this Resolution are true and correct in all material respects. The capitalized terms defined in the recitals to this Resolution are hereby approved and adopted as a part of this Resolution. Capitalized terms not herein defined are defined in the TIRZ Reimbursement Agreement.

SECTION 2. The City Council hereby approves the TIRZ Reimbursement Agreement in substantially the form attached hereto as Exhibit 1, with such changes as may be approved by the City Manager, and authorizes the Mayor to execute and the City Secretary to attest such Agreement.

SECTION 3. This Resolution shall take effect immediately from and after its passage by the City Council of the City.

DULY RESOLVED, PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, AND EFFECTIVE on the 17th day of July 2023.

DocuSigned by:
Daniel Aleman Jr.
D999585317D142B...

Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

DocuSigned by:
Sonja Land
C2518095973F46A...

Sonja Land
City Secretary

DocuSigned by:
David Paschall
666E18891208434...

David L. Paschall
City Attorney

EXHIBIT 1

TIRZ REIMBURSEMENT AGREEMENT

BETWEEN

THE CITY OF MESQUITE, TEXAS,

**THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER 15,
CITY OF MESQUITE (SOLTERRA)**

AND

HC SOLTERRA, LLC

TIRZ REIMBURSEMENT AGREEMENT

BETWEEN

THE CITY OF MESQUITE, TEXAS

CITY OF MESQUITE, TAX INCREMENT REINVESTMENT ZONE NUMBER 15

AND

HC SOLTERRA, LLC., A TEXAS LIMITED LIABILITY COMPANY

Dated: July 17, 2023

Table of Contents

	<u>Page</u>
ARTICLE I. DEFINITIONS	2
ARTICLE II. CITY OF MESQUITE COMMITMENTS	8
2.1 Zone Funding:	8
2.2 TIRZ Accounts:	8
2.3 Flow of TIRZ Revenues: City Tax Increment	8
2.4 Flow of TIRZ Revenues: Improvement Area A-1.1 Subaccount:	9
2.5 Flow of TIRZ Revenues: Improvement Area A-1.2 Subaccount:	10
2.6 Flow of TIRZ Revenues: Improvement Area A-1.3 Subaccount:	12
2.7 Flow of TIRZ Revenues: Improvement Area C-1 Subaccount:	14
2.8 Flow of TIRZ Revenues: Improvement Area C-2 Subaccount:	15
2.9 Flow of TIRZ Revenues: Improvement Area C-3 Subaccount:	17
2.10 Future Improvement Area Subaccounts:	18
2.11 Payment of Zone Funds:	19
2.12 Reimbursement Process:	19
2.13 Priority:	19
2.14 TIRZ Bonds:	20
ARTICLE III. THE DEVELOPER COMMITMENTS	20
3.1 City Regulation:	20
3.2 Payment of Taxes:	20
ARTICLE IV. REPRESENTATIONS AND WARRANTIES	21
4.1 Representations and Warranties of City.	21
4.2 Representations and Warranties of Developer:	21

Table of Contents
(continued)

	<u>Page</u>
ARTICLE V. DEFAULT AND REMEDIES	22
5.1 Developer Default:	22
5.2 Notice and Cure Period:	23
5.3 City’s Remedies:	23
5.4 Effect of Termination:	24
5.5 City Default:	24
5.6 Developer’s Remedies:	24
5.7 Limited Waiver of Immunity:	24
5.8 Limitation on Damages:	25
5.9 Waiver:	25
ARTICLE VI. NON-COMPLIANCE TAXABLE ASSESSED VALUE TARGET	25
6.1 Appraisal Disputes:	25
6.2 Restriction on Transfer to Tax-Exempt Entities:	25
ARTICLE VII. TERM OF AGREEMENT	26
7.1 Term:	26
ARTICLE VIII. MISCELLANEOUS	26
8.1 Article and Section Headings:	26
8.2 City Right of Audit:	26
8.3 Venue and Choice of Law:	26
8.4 Signature Authority:	27
8.5 Notice:	27
8.6 Assignment:	27

Table of Contents
(continued)

	<u>Page</u>
8.7 No Acceleration:	28
8.8 Agreement and Binding Authority:	28
8.9 Severability; Waiver:	28
8.10 No Third-Party Beneficiaries:	28
8.11 No Joint Venture:	28
8.12 Legal Costs:	28
8.13 Anti-Boycott Verification:	28
8.14 Iran, Sudan and Foreign Terrorist Organizations:	29
8.15 Petroleum	29
8.16 Firearms	29
8.17 Counterparts:	31
 Exhibit A Form of Reimbursement Request	

**REIMBURSEMENT AGREEMENT BETWEEN
THE CITY OF MESQUITE, TAX INCREMENT REINVESTMENT ZONE NUMBER 15
AND HC SOLTERRA, LLC., A TEXAS LIMITED LIABILITY COMPANY FOR
TAX INCREMENT REINVESTMENT ZONE FUNDING**

This REIMBURSEMENT AGREEMENT (hereinafter “Agreement”) is entered into by and between HC Solterra, LLC., a Texas limited liability company (hereinafter referred to as the “Developer”), the CITY OF MESQUITE, TEXAS (hereinafter referred to as “City”) and the Board of Directors of Reinvestment Zone Number 15, City of Mesquite (the “Board”) (collectively referred to herein as the “Parties”) effective as of July 17, 2023.

RECITALS:

WHEREAS, City has designated a certain area as Reinvestment Zone Number 15 for Tax Increment Financing (hereinafter, the “Zone” or the “TIRZ”) and has adopted the Final TIRZ Plan (defined herein) for Zone to provide partial public financing of projects for public improvements and enhanced infrastructure within the Zone; and

WHEREAS, the Zone encompasses approximately 1,920 acres of contiguous land currently located within the corporate limits of the (the “Property”). The boundaries of the Zone are set forth in that certain Ordinance No. 4869 adopted on June 7, 2021 creating the Zone; and

WHEREAS, it is intended that a portion of the Property will be developed by the Developer primarily as a residential housing development in accordance with the applicable City Regulations (the “Project”); and

WHEREAS, in order to incentivize the development of the Property and encourage and support economic development within the boundaries of the Zone and to promote employment, the City desires to facilitate the development of the Property through the financing of certain Public Improvements (as defined herein); and

WHEREAS, the completion of the Public Improvements will facilitate and encourage development both within and outside the Zone that will significantly enhance growth, and upon annexation of the land within the Zone, and will generate tax revenues to the City; and

WHEREAS, the completion of the Public Improvements will promote state and local economic development and will stimulate business and commercial activity in the City, Dallas County and the State; and will contribute to the development and diversification of the economy of the State, and to the development and expansion of the commerce of the state; and

WHEREAS, the City has an interest in expanding the tax base which accomplishes a public purpose; and

WHEREAS, pursuant to the TIRZ Act (as defined herein), the City Council and the Board have the authority to dedicate the use of City Tax Increment (define herein) to pay for or reimburse certain costs of the Public Improvements; and

WHEREAS, pursuant to the TIRZ Act, the City Council and the Board have the authority to enter into this Agreement and to implement the Final TIRZ Plan; and

WHEREAS, the Developer will be responsible for the completion of the Public Improvements and will convey such Public Improvements to the City in exchange for payment or reimbursement of the certain costs relating to the Public Improvements as provided herein; and

NOW, THEREFORE, for the promises and considerations set forth herein, the Parties to this Agreement agree as follows:

ARTICLE I. **DEFINITIONS**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Article have the meanings assigned to them in the Recitals or this Definitions Section, and all such terms include the plural as well as the singular.

“Actual Costs” mean, with respect to Public Improvements, the actual costs paid or incurred by or on behalf of the Developers, (either directly or through affiliates), including : (1) the costs for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Public Improvements; (2) the fees paid for obtaining permits, licenses, or other governmental approvals for such Public Improvements; (3) the costs for external professional services, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, accounting, and similar professional services; (4) the costs for all labor, bonds, and materials, including equipment and fixtures, owing to contractors, builders, and materialmen engaged in connection with the acquisition, construction, or implementation of the Public Improvements; (5) all related permitting and public approval expenses, and architectural, engineering, consulting, and other governmental fees and charges and (6) costs to implement, administer, and manage the above-described activities including, but not limited to, a construction management fee equal to four percent (4%) of construction costs if the Developer is serving as construction manager but not the general contractor.

“Agreement” has the meaning stated in the first paragraph hereof.

“Applicable Law” means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority. Applicable Laws shall include, but not be limited to, City codes and ordinances.

“Assessments” means those certain assessments levied by the City pursuant to the PID Act on specially benefitted parcels within the PID for the purpose of paying the costs of the Public Improvements.

“Assessment Revenues” means the revenues received from Assessments levied within the PID.

“Bond Issuance Costs” means the costs associated with issuing PID Bonds, including, but not limited to, attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Texas Attorney General, and any other cost or expense incurred by the City directly associated with the issuance of any series of PID Bonds.

“City” means the City of Mesquite, Texas.

“City Representative” means the City Manager or designee.

“City Regulations” mean the applicable, valid and lawful City Code provisions, ordinances, design standards, and uniform and international building and construction codes, duly adopted by the City, including the PD regulations, which shall be applied to the Solterra Development.

“City Tax Increment” means, for any given year during the term of this Agreement, beginning with the 2021 tax year, 60% of the ad valorem property taxes levied and collected by the City for that year in the captured appraised value of real property taxable by the City and located within the Zone reduced by reasonable, ordinary and customary expenses of the TIRZ, including expenses to establish and administer the Zone.

“Completion of Construction” shall mean that (i) the construction of the applicable Public Improvement, or portion or segment thereof, as the case may be, benefitting the Property has been substantially completed in accordance with City Regulations as determined by the City; and (ii) the City has with respect to applicable Public Improvements accepted the respective Public Improvements or segment or portion thereof.

“Council Approval Date” means the date on which the City Council of the City of Mesquite approved this Agreement.

“County” means Dallas County, Texas.

“Developer” means HC Solterra, LLC., a Texas limited liability company its successors and assigns.

“Final TIRZ Plan” means the “Final Project Plan and Reimbursement Zone Financing Plan, Tax Increment Reinvestment Zone No. 15, City of Mesquite, Texas,” dated July 17, 2023, approved by the Board the City Council on July 17, 2023.

“First Year Annual Collection Costs” means the estimated Annual Collection Costs to be accrued prior to collection of the first Annual Installment of the Assessment securing the applicable PID Bonds, as shown in the Service and Assessment Plan.

“Future Improvement Area” means areas within the Solterra Development that are anticipated to be developed and platted into distinct improvement areas.

“Future Improvement Area Assessed Property” means parcels within a Future Improvement Area that are assessed for the Future Improvement Area Project Costs pursuant to the Service and Assessment Plan.

“Future Improvement Area Projects” means the Public Improvements to be constructed within each Future Improvement Area which may be reimbursed from TIRZ Revenues pursuant to this Agreement.

“Future Improvement Area Project Costs” means the Actual Costs of the Future Improvement Area Projects.

“Future Improvement Area Subaccount” means one or more subaccounts within the City Tax Increment Account into which TIRZ Revenues allocable to the Future Improvement Area Assessed Property is deposited.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, sales taxes, charges, 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 Developer, any Affiliates or any property or any business owned by Developer or any Affiliates within City.

“Improvement Area” means areas of development within the Solterra Development, including Improvement Area A-1.1, Improvement Area A-1.2, Improvement Area A-1.3, Improvement Area C-1, Improvement Area C-2, Improvement Area C-3 and any Future Improvement Area.

“Improvement Area A-1 Bonds” means those certain “City of Mesquite, Texas, Special Assessment Revenue Bonds, Series 2023 (Solterra Public Improvement District Improvement Area A-1 Projects).”

“Improvement Area A-1 Improvements” means the Public Improvements which only benefit the Improvement Area A-1.1 Assessed Property, the Improvement Area A-1.2 Assessed Property, and the Improvement Area A-1.3 Assessed Property, as further described in the Service and Assessment Plan.

“Improvement Area A-1.1” means approximately 69.573 acres located within Improvement Area A-1, more specifically described in the Service and Assessment Plan.

“Improvement Area A-1.1 Assessed Property” means any Parcel within Improvement Area A-1.1 against which an Improvement Area A-1.1 Assessment is levied.

“Improvement Area A-1.2 Assessed Property” means any Parcel within Improvement Area A-1.2 against which an Improvement Area A-1.2 Assessment is levied.

“Improvement Area A-1.3 Assessed Property” means any Parcel within Improvement Area A-1.3 against which an Improvement Area A-1.3 Assessment is levied.

“Improvement Area A-1.1 Projects” means collectively, (1) the pro rata portion of the Zone A Improvements allocable to Improvement Area A-1.1; (2) the pro rata portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.1; (3) the pro rata portion of the Major Improvements allocable to Improvement Area A-1.1; (4) the pro rata portion of the First Year Annual Collection Costs based on outstanding Assessment related to the Improvement Area A-1 Bonds; and (5) the pro rata portion of the Bond Issuance Costs based on outstanding Assessment incurred in connection with the issuance of Improvement Area A-1 Bonds.

“Improvement Area A-1.2” means approximately 123.110 acres located within the Improvement Area A-1, more specifically described in the Service and Assessment Plan.

“Improvement Area A-1.2 Projects” means collectively, (1) the pro rata portion of the Zone A Improvements allocable to Improvement Area A-1.2; (2) the pro rata portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.2; (3) the pro rata portion of the Major Improvements allocable to Improvement Area A-1.2; (4) the pro rata portion of the First Year Annual Collection Costs based on outstanding Assessment related to the Improvement Area A-1 Bonds; and (5) the pro rata portion of the Bond Issuance Costs based on outstanding Assessment incurred in connection with the issuance of Improvement Area A-1 Bonds.

“Improvement Area A-1.3” means approximately 17.153 acres located within the District, more specifically described in the Service and Assessment Plan.

“Improvement Area A-1.3 Projects” means collectively, (1) the pro rata portion of the Zone A Improvements allocable to Improvement Area A-1.3; (2) the pro rata portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.3; (3) the pro rata portion of the Major Improvements allocable to Improvement Area A-1.3; (4) the pro rata portion of the First Year Annual Collection Costs based on outstanding Assessment related to the Improvement Area A-1 Bonds; and (5) the pro rata portion of the Bond Issuance Costs based on outstanding Assessment incurred in connection with the issuance of Improvement Area A-1 Bonds.

“Improvement Area C-1” means approximately 90.988 acres located within the District, more specifically described in Exhibit P-8 and depicted on Exhibit A-8.

“Improvement Area C-1 Assessed Property” means any Parcel within Improvement Area C-1 against which an Improvement Area C-1 Assessment is levied.

“Improvement Area C-2 Assessed Property” means any Parcel within Improvement Area C-2 against which an Improvement Area C-2 Assessment is levied.

“Improvement Area C-1 Bonds” means those certain “City of Mesquite, Texas, Special Assessment Revenue Bonds, Series 2023 (Solterra Public Improvement District Improvement Area C-1 Project)”.

“Improvement Area C-1 Improvements” means the Authorized Improvements which only benefit the Improvement Area C-1 Assessed Property, as further described in the Service and Assessment Plan.

“Improvement Area C-1 Projects” means collectively, (1) the pro rata portion of the Improvement Zone C Improvements allocable to Improvement Area C-1; (2) the Improvement Area C-1 Improvements; (3) the pro rata portion of the Major Improvements allocable to

Improvement Area C-2; (4) the pro rata portion of the First Year Annual Collection Costs based on outstanding Assessment related to the Improvement Area C-1 Bonds; and (5) the pro rata portion of the Bond Issuance Costs based on outstanding Assessment incurred in connection with the issuance of Improvement Area C-1 Bonds.

“Improvement Area C-2” means approximately 38.882 acres located within the District, more specifically described and depicted in the Service and Assessment Plan.

“Improvement Area C-2 Bonds” means those certain “City of Mesquite, Texas, Special Assessment Revenue Bonds, Series 2023 (Solterra Public Improvement District Improvement Area C-2 Project)”.

“Improvement Area C-2 Improvements” means the Authorized Improvements which only benefit the Improvement Area C-2 Assessed Property, as further described in the Service and Assessment Plan.

“Improvement Area C-2 Projects” means collectively, (1) the pro rata portion of the Improvement Zone C Improvements allocable to Improvement Area C-2; (2) the Improvement Area C-2 Improvements; (3) the pro rata portion of the Major Improvements allocable to Improvement Area C-2; (4) the pro rata portion of the First Year Annual Collection Costs based on outstanding Assessment related to the Improvement Area C-2 Bonds; and (5) the pro rata portion of the Bond Issuance Costs based on outstanding Assessment incurred in connection with the issuance of Improvement Area C-2 Bonds.

“Improvement Area C-3 Projects” means collectively, (1) the pro rata portion of the Improvement Zone C Improvements allocable to Improvement Area C-3; (2) the Improvement Area C-3 Improvements; (3) the pro rata portion of the Major Improvements allocable to Improvement Area C-3; and (4) the pro rata portion of the First Year Annual Collection Costs based on outstanding Assessment related to the Improvement Area C-3 Assessment.

“Legal Costs” means reasonable court costs, attorneys’ and paralegals’ fees, experts’ fees, and other costs and expenses incurred in investigating, preparing, prosecuting, or settling any legal action or proceeding or arbitration, mediation, or other method of alternative dispute resolution.

“Major Improvements” means those Authorized Improvements that confer a special benefit to all of the Assessed Property within the District as further described in the Service and Assessment Plan.

“PID” means the Solterra Public Improvement District.

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

“PID Bonds” means any bonds issued by the City in one or more series and secured in whole or in part by Assessments.

“Public Improvement Project Costs” means the Actual Costs of the Public Improvements set forth in Exhibit G to the Solterra Development Agreement, as may be amended pursuant to the terms of such agreement and as set forth in the applicable Service and Assessment Plan, such costs to be eligible “project costs,” as defined in the PID Act and the Final TIRZ Plan. For the avoidance

of doubt, all costs for retaining walls set forth in Exhibit G that are not (a) adjacent to and required for construction or maintenance a City owned trail or (b) adjacent to and required for the construction or maintenance of public streets and roadways, are not authorized Public Improvement Project Costs and shall not be paid or reimbursed by the City from any source of revenue.

“Public Improvements” means public improvements to be developed and constructed or caused to be developed or constructed inside and outside of the Zone by the Developer to serve the assessed property within the Zone and the applicable Improvement Area, which includes the improvements described in Exhibit G to the Solterra Development Agreement and in the applicable Service and Assessment Plan.

“Reimbursement Cap” means the total amount of reimbursement to the Developer for the Public Improvement Project Costs from any source, including the proceeds of PID Bonds, TIRZ Bonds, TIRZ Revenues, Roadway Recovery Fees or Assessment Revenues; such total amount shall be no more than \$297,560,206.

“Reimbursement Request” means a certificate substantially in the form attached hereto as Exhibit A or otherwise approved by the City identifying the costs and expenditures for the Public Improvement Project Costs and requesting payment for such expenditures from funds on deposit in a TIRZ subaccount as set forth herein.

“Roadway Capital Recovery Fee” means the \$3,000 fee charged to each commercial and residential lot within each improvement area pursuant to the Solterra Development Agreement.

“Service and Assessment Plan” or “SAP” means the Service and Assessment Plans for the PID and any amendments, supplements or updates thereto, adopted and approved by the City that identifies and allocates the Assessments on benefitted parcels within the PID and sets forth the method of assessment, the parcels assessed, the amount of the Assessments, the Public Improvements and the method of collection of the Assessment.

“Solterra Development” means that residential development to be developed and constructed on the Property as contemplated by the Solterra Development Agreement.

“Solterra Development Agreement” means the agreement executed by and between the Developer, and the City effective October 19, 2020, that “First Amendment to Development Agreement” effective March 15, 2021, and that “Second Amendment to the Development Agreement” effective February 20, 2023.

“State” means the State of Texas.

“Tax Increment Fund” means the special fund created for the Zone pursuant to Chapter 311, Texas Tax Code and funded with the City Tax Increment.

“TIRZ Act” means Chapter 311, Texas Tax Code, as amended.

“TIRZ Bonds” means special revenue bonds issued by the City containing a pledge of TIRZ Revenues.

“TIRZ-Eligible” means those expenses or improvements that comply with the requirements of Chapter 311 of the TIRZ Act.

“TIRZ Fund” means the fund set up by the City in order to receive the TIRZ Revenues in accordance with this Agreement, the TIRZ Act and the TIRZ Project and Finance Plan.

“TIRZ Revenues” means the revenues received from the City Tax Increment collected and deposited to the applicable TIRZ Account.

“Zone” or “TIRZ” means Reinvestment Zone Number 15 for Tax Increment Financing, City of Mesquite, Texas.

ARTICLE II. **CITY OF MESQUITE COMMITMENTS**

2.1 **Zone Funding:** City agrees to provide Zone reimbursement to the Developer in an amount such as not to cause the total reimbursement to the Developer from the City, from all sources, to exceed the Reimbursement Cap.

(a) Payments or reimbursements of revenues pursuant to this Agreement shall only be made to the extent such revenues are available and on deposit in the appropriate account or subaccount of the Tax Increment Fund as set forth herein.

2.2 **TIRZ Accounts:** The following accounts subaccounts are established under the Tax Increment Fund

- (a) City Tax Increment Account
 - (i) Improvement Area A.1-1 Subaccount
 - (ii) Improvement Area A-1.2 Subaccount
 - (iii) Improvement Area A-1.3 Subaccount
 - (iv) Improvement Area C-1 Subaccount
 - (v) Improvement Area C-2 Subaccount
 - (vi) Improvement Area C-3 Subaccount

2.3 **Flow of TIRZ Revenues: City Tax Increment**

(a) City Tax Increment. The City Tax Increment shall be received annually and distributed follows:

(i) First, to the City Tax Increment Account to pay the City administrative costs relating to the TIRZ, including any reasonable third-party administrative costs; and

(ii) Second, for calendar years 2023-2032, to pay any outstanding invoices for wildlife mitigation services if the Developer or the HOA has not fully paid the amounts within thirty (30) days; provided, however, the aggregate payments for wildlife mitigation services within the Solterra Development, whether paid by the Developer, the HOA or from the TIRZ Fund shall not exceed \$100,000 per year; and

(iii) Third, to the Improvement Area A-1.1 Subaccount, the Improvement Area A-1.2 Subaccount, the Improvement Area A-1.3 Subaccount, the Improvement Area C-1 Subaccount, the Improvement Area C-2 Subaccount, the Improvement Area C-3 Subaccount and any Future Improvement Area Subaccount, allocated based upon the Improvement Area A-1.1 Assessed Property, Improvement Area A-1.2 Assessed Property, the Improvement Area A-1.3 Assessed Property, the Improvement Area C-1 Assessed Property, the Improvement Area C-2 Assessed Property, the Improvement Area C-3 Assessed Property and any Future Improvement Area Assessed Property, respectively.

2.4 Flow of TIRZ Revenues: Improvement Area A-1.1 Subaccount: Upon deposit of TIRZ Revenues in the Improvement Area A-1.1 Subaccount, such TIRZ Revenues shall be distributed as follows:

(a) First, to subsidize Assessments levied in Improvement Area A-1.1 in order to lower the Annual Installments of the Assessments in Improvement Area A-1.1 to a level that produces an overall tax equivalent tax rate of \$3.12 per \$100 of assessed value (determined at the time of the levy) for each parcel within Improvement Area A-1.1, as set forth in the Service and Assessment Plan;

(b) Second, pursuant to approved Reimbursement Requests, for the reimbursement of the Improvement Area A-1.1 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area A-1 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority until the total aggregate amount of three million (\$3,000,000) has been reimbursed from TIRZ Revenues on deposit in the Tax Increment Fund (which includes the Improvement Area A-1.1 Subaccount, the Improvement Area A-1.2 Subaccount, the Improvement Area A-1.3 Subaccount, the Improvement Area C-1 Subaccount, the Improvement Area C-2 Subaccount, the Improvement Area C-3 Subaccount and all Future Improvement Area Subaccounts):

(i) the pro rata portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.1 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.1, subject to the limit set forth in (b) above, the Reimbursement Cap, and the expiration of the TIRZ.

(ii) the pro rata portion of the Zone A Improvements allocable to Improvement Area A-1.1 that are not paid or reimbursed from Assessments levied in

Improvement Area A-1.1, subject to the limit set forth in (b) above, the Reimbursement Cap, and the expiration of the TIRZ.

(iii) the pro rata portion of the Major Improvements allocable to Improvement Area A-1.1 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.1, subject to the limit set forth in (b) above, the Reimbursement Cap, and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area A-1.1 Project Costs payable pursuant to the TIRZ Plan subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(c) Third, for the payment of debt service on any TIRZ Bonds issued by the City for the reimbursement of Improvement Area A-1.1 Project Costs. For the avoidance of doubt, the first \$3,000,000 of revenue as set forth in subsection (b) above, shall not be pledged to TIRZ Bonds and any TIRZ Bonds issued to reimburse the Developer shall only have a pledge of 70% of the City Tax Increment; and

(d) Fourth, pursuant to approved Reimbursement Requests, for reimbursement of the Improvement Area A-1.1 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area A-1 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority:

(i) the portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.1 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.1, subject to the Reimbursement Cap and the expiration of the TIRZ.

(ii) the portion of the Zone A Improvements allocable to Improvement Area A-1.1 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.1, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area A-1.1 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.1, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area A-1.1 Project Costs payable pursuant to the TIRZ Plan subject to the Reimbursement Cap and the expiration of the TIRZ.

(e) Fifth, once all eligible unpaid costs of Improvement Area A-1.1 Projects have been reimbursed, TIRZ Revenues in the Improvement Area A-1.1 Subaccount shall be distributed to the City for any lawful purpose.

2.5 Flow of TIRZ Revenues: Improvement Area A-1.2 Subaccount: Upon deposit of TIRZ Revenues in Improvement Area A-1.2 Subaccount, such TIRZ Revenues shall be distributed as follows:

(a) First, to subsidize Assessments levied in Improvement Area A-1.2 in order to lower the Annual Installments of the Assessments in Improvement Area A-1.2 to a level that produces an overall tax equivalent tax rate of \$3.12 per \$100 of assessed value (determined at the time of the levy) for each parcel within Improvement Area A-1.2, as set forth in the Service and Assessment Plan;

(b) Second, pursuant to approved Reimbursement Requests, for the reimbursement of the Improvement Area A-1.2 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area A-1 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority until the total aggregate amount of three million (\$3,000,000) has been reimbursed from TIRZ Revenues on deposit in the Tax Increment Fund (which includes the Improvement Area A-1.1 Subaccount, the Improvement Area A-1.2 Subaccount, the Improvement Area A-1.3 Subaccount, the Improvement Area C-1 Subaccount, the Improvement Area C-2 Subaccount, the Improvement Area C-3 Subaccount and all Future Improvement Area Subaccounts):

(i) the portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.2 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.2, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(ii) the portion of the Zone A Improvements allocable to Improvement Area A-1.2 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.2, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area A-1.2 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.2, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area A-1.2 Project Costs payable pursuant to the TIRZ Plan subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(c) Third, for the payment of debt service on any TIRZ Bonds issued by the City for the reimbursement of Improvement Area A-1.2 Project Costs. For the avoidance of doubt, the first \$3,000,000 of revenue as set forth in subsection (b) above shall not be pledged to TIRZ Bonds and any TIRZ Bonds issued to reimburse the Developer shall only have a pledge of 70% of the City Tax Increment; and

(d) Fourth, pursuant to approved Reimbursement Requests, for reimbursement of the Improvement Area A-1.2 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area A-1 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority:

(i) the portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.2 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.2, subject to the Reimbursement Cap and the expiration of the TIRZ.

(ii) the portion of the Zone A Improvements allocable to Improvement Area A-1.2 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.2, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area A-1.2 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.2, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area A-1.2 Project Costs payable pursuant to the TIRZ Plan subject to the Reimbursement Cap and the expiration of the TIRZ.

(e) Fifth, once all eligible unpaid costs of Improvement Area A-1.2 Projects have been reimbursed, TIRZ Revenues in the Improvement Area A-1.2 Subaccount shall be distributed to the City for any lawful purpose.

2.6 Flow of TIRZ Revenues: Improvement Area A-1.3 Subaccount: Upon deposit of TIRZ Revenues in Improvement Area A-1.3 Subaccount, such TIRZ Revenues shall be distributed as follows:

(a) First, to subsidize Assessments levied in Improvement Area A-1.3 in order to lower the Annual Installments of the Assessments in Improvement Area A-1.3 to a level that produces an overall tax equivalent tax rate of \$3.12 per \$100 of assessed value (determined at the time of the levy) for each parcel within Improvement Area A-1.3, as set forth in the Service and Assessment Plan;

(b) Second, pursuant to approved Reimbursement Requests, for the reimbursement of the Improvement Area A-1.3 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area A-1 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority until the total aggregate amount of three million (\$3,000,000) has been reimbursed from TIRZ Revenues on deposit in the Tax Increment Fund (which includes the Improvement Area A-1.1 Subaccount, the Improvement Area A-1.2 Subaccount, the Improvement Area A-1.3 Subaccount, the Improvement Area C-1 Subaccount, the Improvement Area C-2 Subaccount, the Improvement Area C-3 Subaccount and all Future Improvement Area Subaccounts):

(i) the portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.3 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.3, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(ii) the portion of the Zone A Improvements allocable to Improvement Area A-1.3 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.3, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area A-1.3 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.3, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area A-1.3 Project Costs payable pursuant to the TIRZ Plan subject to the limit set forth in (d) above, the Reimbursement Cap and the expiration of the TIRZ.

(c) Third, for the payment of debt service on any TIRZ Bonds issued by the City for the reimbursement of Improvement Area A-1.3 Project Costs. For the avoidance of doubt, the first \$3,000,000 of revenue as set forth in subsection (b) above shall not be pledged to TIRZ Bonds and any TIRZ Bonds issued to reimburse the Developer shall only have a pledge of 70% of the City Tax Increment; and

(d) Fourth, subject to approved Reimbursement Requests, for reimbursement of the Improvement Area A-1.3 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area A-1 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority:

(i) the pro rata portion of the Improvement Area A-1 Improvements allocable to Improvement Area A-1.3 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.3, subject to the Reimbursement Cap and the expiration of the TIRZ.

(ii) the pro rata portion of the Zone A Improvements allocable to Improvement Area A-1.3 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.3, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iii) the pro rata portion of the Major Improvements allocable to Improvement Area A-1.3 that are not paid or reimbursed from Assessments levied in Improvement Area A-1.3, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area A-1.3 Project Costs payable pursuant to the TIRZ Plan subject to the Reimbursement Cap and the expiration of the TIRZ.

(e) Fifth, once all eligible unpaid costs of Improvement Area A-1.3 Projects have been reimbursed, TIRZ Revenues in the Improvement Area A-1.3 Subaccount shall be distributed to the City for any lawful purpose

2.7 Flow of TIRZ Revenues: Improvement Area C-1 Subaccount: Upon deposit of TIRZ Revenues in Improvement Area C-1 Subaccount, such TIRZ Revenues shall be distributed as follows:

(a) First, to subsidize Assessments levied in Improvement Area C-1 in order to lower the Annual Installments of the Assessments in Improvement Area C-1 to a level that produces an overall tax equivalent tax rate of \$3.12 per \$100 of assessed value (determined at the time of the levy) for each parcel within Improvement Area C-1, as set forth in the Service and Assessment Plan;

(b) Second, subject to approved Reimbursement Requests, for the reimbursement of the Improvement Area C-1 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area C-1 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority until the total aggregate amount of three million (\$3,000,000) has been reimbursed from TIRZ Revenues on deposit in the Tax Increment Fund (which includes the Improvement Area A-1.1 Subaccount, the Improvement Area A-1.2 Subaccount, the Improvement Area A-1.3 Subaccount, the Improvement Area C-1 Subaccount, the Improvement Area C-2 Subaccount, the Improvement Area C-3 Subaccount and all Future Improvement Area Subaccounts):

(i) the portion of the Improvement Area C-1 Improvements allocable to Improvement Area C-1 that are not paid or reimbursed from Assessments levied in Improvement Area C-1, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(ii) the portion of the Zone C Improvements allocable to Improvement Area C-1 that are not paid or reimbursed from Assessments levied in Improvement Area C-1, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area C-1 that are not paid or reimbursed from Assessments levied in Improvement Area C-1, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area C-1 Project Costs payable pursuant to the TIRZ Plan subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(c) Third, for the payment of debt service on any TIRZ Bonds issued by the City for the reimbursement of Improvement Area C-1 Project Costs. For the avoidance of doubt, the first \$3,000,000 of revenue as set forth in subsection (b) above shall not be pledged to TIRZ Bonds and

any TIRZ Bonds issued to reimburse the Developer shall only have a pledge of 70% of the City Tax Increment;

(d) Fourth, pursuant to approved Reimbursement Requests, for reimbursement of the Improvement Area C-1 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area A-1 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees, up to the Reimbursement Cap, in the following order of priority:

(i) the portion of the Improvement Area C-1 Improvements allocable to Improvement Area C-1 are not paid or reimbursed from Assessments levied in Improvement Area C-1, subject to the Reimbursement Cap and the expiration of the TIRZ.

(ii) the portion of the Zone C Improvements allocable to Improvement Area C-1 that are not paid or reimbursed from Assessments levied in Improvement Area C-1, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area C-1 that are not paid or reimbursed from Assessments levied in Improvement Area C-1, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area C-1 Project Costs payable pursuant to the TIRZ Plan subject to the Reimbursement Cap and the expiration of the TIRZ.

(e) Fifth, once all eligible unpaid costs of Improvement Area C-1 Projects have been reimbursed, TIRZ Revenues in the Improvement Area C-1 Subaccount shall be distributed to the City for any lawful purpose.

2.8 Flow of TIRZ Revenues: Improvement Area C-2 Subaccount: Upon deposit of TIRZ Revenues in Improvement Area C-2 Subaccount, such TIRZ Revenues shall be distributed as follows:

(a) First, to subsidize Assessments levied in Improvement Area C-2 in order to lower the Annual Installments of the Assessments in Improvement Area C-2 to a level that produces an overall tax equivalent tax rate of \$3.12 per \$100 of assessed value (determined at the time of the levy) for each parcel within Improvement Area C-2, as set forth in the Service and Assessment Plan;

(b) Second, subject to approved Reimbursement Requests, for the reimbursement of the Improvement Area C-2 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area C-2 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority until the total aggregate amount of three million (\$3,000,000) has been reimbursed from TIRZ Revenues on deposit in the Tax Increment Fund (which includes the Improvement Area A-1.1 Subaccount, the Improvement Area A-1.2 Subaccount, the Improvement Area A-1.3 Subaccount, the

Improvement Area C-1 Subaccount, the Improvement Area C-2 Subaccount, the Improvement Area C-3 Subaccount and all Future Improvement Area Subaccounts):

- (i) the portion of the Improvement Area C-2 Improvements allocable to Improvement Area C-2 that are not paid or reimbursed from Assessments levied in Improvement Area C-2, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.
- (ii) the portion of the Zone C Improvements allocable to Improvement Area C-2 that are not paid or reimbursed from Assessments levied in Improvement Area C-2, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.
- (iii) the portion of the Major Improvements allocable to Improvement Area C-2 that are not paid or reimbursed from Assessments levied in Improvement Area C-2, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.
- (iv) any remaining eligible and unpaid Improvement Area C-2 Project Costs payable pursuant to the TIRZ Plan subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(c) Third, for the payment of debt service on any TIRZ Bonds issued by the City for the reimbursement of Improvement Area C-2 Project Costs. For the avoidance of doubt, the first \$3,000,000 of revenue as set u in subsection (b) above shall not be pledged to TIRZ Bonds and any TIRZ Bonds issued to reimburse the Developer shall only have a pledge of 70% of the City Tax Increment; and

(d) Forth, (i) thirty percent (30%) of the remaining TIRZ Revenues on deposit in the Improvement Area C-2 Subaccount shall be used by the City for the payment of City projects within the TIRZ pursuant to the Final TIRZ Plan, and (ii) Seventy percent (70%) of the remaining TIRZ Revenues on deposit in the Improvement Area C-2 Subaccount shall be used for reimbursement of the Improvement Area C-2 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area C-2 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority:

- (i) the portion of the Improvement Area C-2 Improvements allocable to Improvement Area C-2 that are not paid or reimbursed from Assessments levied in Improvement Area C-2, subject to the Reimbursement Cap and the expiration of the TIRZ.
- (ii) the portion of the Zone A Improvements allocable to Improvement Area C-2 that are not paid or reimbursed from Assessments levied in Improvement Area C-2, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area C-2 that are not paid or reimbursed from Assessments levied in Improvement Area C-2, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area C-2 Project Costs payable pursuant to the TIRZ Plan subject to the Reimbursement Cap and the expiration of the TIRZ.

(e) Fifth, once all eligible unpaid costs of Improvement Area C-2 Projects have been reimbursed, TIRZ Revenues in the Improvement Area C-2 Subaccount shall be distributed to the City for any lawful purpose.

2.9 Flow of TIRZ Revenues: Improvement Area C-3 Subaccount: Upon deposit of TIRZ Revenues in Improvement Area C-3 Subaccount, such TIRZ Revenues shall be distributed as follows:

(a) First, to subsidize Assessments levied in Improvement Area C-3 in order to lower the Annual Installments of the Assessments in Improvement Area C-3 to a level that produces an overall tax equivalent tax rate of \$3.12 per \$100 of assessed value (determined at the time of the levy) for each parcel within Improvement Area C-3, as set forth in the Service and Assessment Plan;

(b) Second, subject to approved Reimbursement Requests, for the reimbursement of the Improvement Area C-3 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area C-3 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority until the total aggregate amount of three million (\$3,000,000) has been reimbursed from TIRZ Revenues on deposit in the Tax Increment Fund (which includes the Improvement Area A-1.1 Subaccount, the Improvement Area A-1.2 Subaccount, the Improvement Area A-1.3 Subaccount, the Improvement Area C-1 Subaccount, the Improvement Area C-2 Subaccount, the Improvement Area C-3 Subaccount and all Future Improvement Area Subaccounts):

(i) the portion of the Improvement Area C-3 Improvements allocable to Improvement Area C-3 that are not paid or reimbursed from Assessments levied in Improvement Area C-3, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(ii) the portion of the Zone C Improvements allocable to Improvement Area C-3 that are not paid or reimbursed from Assessments levied in Improvement Area C-3, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area C-3 that are not paid or reimbursed from Assessments levied in Improvement Area C-3, subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area C-3 Project Costs payable pursuant to the TIRZ Plan subject to the limit set forth in (b) above, the Reimbursement Cap and the expiration of the TIRZ.

(c) Third, for the payment of debt service on any TIRZ Bonds issued by the City for the reimbursement of Improvement Area C-3 Project Costs. For the avoidance of doubt, the first \$3,000,000 of revenue as set forth in subsection (b) above shall not be pledged to TIRZ Bonds and any TIRZ Bonds issued to reimburse the Developer shall only have a pledge of 70% of the City Tax Increment; and

(d) Fourth, (i) thirty percent (30%) of the remaining TIRZ Revenues on deposit in the Improvement Area C-3 Subaccount shall be used by the City for the payment of City projects within the TIRZ pursuant to the Final TIRZ Plan, and (ii) Seventy percent (70%) of the remaining TIRZ Revenues on deposit in the Improvement Area C-3 Subaccount shall be used for reimbursement of the Improvement Area C-3 Project Costs to the Developer that will not otherwise be reimbursed to the Developer from Assessment Revenues, the proceeds of Improvement Area C-3 Bonds or TIRZ Bonds, or from Roadway Capital Recovery Fees in the following order of priority:

(i) the portion of the Improvement Area C-3 Improvements allocable to Improvement Area C-3 that are not paid or reimbursed from Assessments levied in Improvement Area C-3, subject to the Reimbursement Cap and the expiration of the TIRZ.

(ii) the portion of the Zone A Improvements allocable to Improvement Area C-3 that are not paid or reimbursed from Assessments levied in Improvement Area C-3, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iii) the portion of the Major Improvements allocable to Improvement Area C-3 that are not paid or reimbursed from Assessments levied in Improvement Area C-3, subject to the Reimbursement Cap and the expiration of the TIRZ.

(iv) any remaining eligible and unpaid Improvement Area C-3 Project Costs payable pursuant to the TIRZ Plan subject to the Reimbursement Cap and the expiration of the TIRZ.

(e) Fifth, once all eligible unpaid costs of Improvement Area C-3 Projects have been reimbursed, TIRZ Revenues in the Improvement Area C-3 Subaccount shall be distributed to the City for any lawful purpose

2.10 Future Improvement Area Subaccounts: As the Solterra Development is developed by improvement area, once a Future Improvement Area has been designated, the TIRZ Revenues from the Future Improvement Area Assessed Property within such Future Improvement Area shall be deposited to the applicable Future Improvement Area Subaccount and shall be disbursed in the same manner as Section 2.8 and 2.9 herein.

2.11 Payment of Zone Funds: All payments made pursuant to this Agreement shall only be made to the extent funds are available in the applicable subaccount of the TIRZ Fund and shall only be made for TIRZ Eligible Costs.

2.12 Reimbursement Process:

(a) The City shall annually disburse funds to reimburse the Developer for Improvement Area A-1.1 Project Costs, Improvement Area A-1.2 Project Costs, Improvement Area A-1.3 Project Costs, Improvement Area C-1 Project Costs, Improvement Area C-2 Project Costs, Improvement Area C-3 Project Costs and Future Improvement Area Project Costs from the applicable subaccount upon:

(i) Completion of Construction of the respective Improvement Area A-1.1 Projects, Improvement Area A-1.2 Projects and Improvement Area A-1.3 Projects, Improvement Area C-1 Projects, Improvement Area C-2 Projects, Improvement Area C-3 Projects, and Future Improvement Area Projects;

(ii) acceptance by the City of the related Improvement Area A-1.1 Projects, Improvement Area A-1.2 Projects, Improvement Area A-1.3 Projects, Improvement Area C-1 Projects, Improvement Area C-2 Projects, Improvement Area C-3 Project, and Future Improvement Area Projects; and

(iii) approval by the City of a completed Reimbursement Request.

(b) Approval of a Reimbursement Request is subject to the Developer providing sufficient documentation of Actual Costs. The City shall review the sufficiency of each Reimbursement Request with respect to compliance with this Agreement, and the City Regulations.

(c) The City shall review each Reimbursement Request within thirty (30) business days and upon approval and once verification of each cost detailed in the Reimbursement Request has occurred, including on-site confirmation by City staff, the Reimbursement Request shall be forwarded for approval to the appropriate City officials.

(d) Upon approval, the Reimbursement Request shall be submitted to the City's finance department for payment with the next annual payment. In no event will the City reimburse more than the Reimbursement Cap.

(e) If the City timely disapproves or questions the correctness or authenticity of the reimbursement request by delivering a detailed notice to the Developer, then payment with respect to disputed portion(s) of the Reimbursement Request shall not be made until the Developer and the City have jointly settled such dispute. The City and the Developer shall meet promptly and cooperate to resolve any such disputes as expeditiously as possible.

2.13 Priority: Notwithstanding anything else in this Agreement, the priority of Developer's right reimbursement hereunder shall be determined by treating Developer's right to any payment due under this Agreement as arising on the Council Approval Date. The Developer's right to

payment pursuant to this Agreement shall have priority of payment over any other payments from the Tax Increment Fund except (i) payments of City administrative costs charged to the TIRZ; (ii) any wildlife mitigation payments made pursuant to Section 2.3(a)(ii) herein, (iii) the subsidy of Assessments levied within the District, (iv) any TIRZ Revenues pledged to TIRZ Bonds issued by the City for reimbursement to the Developer, and (v) the City's 30% share of TIRZ Revenues as set forth herein from Improvement Area C-2, Improvement Area C-3 and Future Improvement Areas. Notwithstanding the above, the \$3,000,000 to be used to reimburse the Developer pursuant to Sections 2.4, 2.5, 2.6 and 2.7 shall have priority over debt service on any TIRZ Bond.

2.14 TIRZ Bonds: The City may issue debt obligations with a pledge, designation, transfer or use of its 30% share of the TIRZ Revenues. Any TIRZ Bonds issued to reimburse the Developer shall have a pledge of no more than 70% of the City Tax Increment. In consultation with the City's financial advisor, each series of TIRZ Bonds shall be issued based on (i) 70% of the net TIRZ Revenues produced in the immediate past completed fiscal year are 2.0 times the average annual debt service requirements of the TIRZ Bonds to be issued, taking into account any TIRZ Bonds outstanding and (ii) as level of annual debt service, payments as reasonably possible, as determined by the City's financial advisor. Notwithstanding the foregoing, the City, subject to the discretion of the City Council, may agree to a coverage factor for the issuance of TIRZ Bonds that is less than the 2.0 times stated above. In no event shall the Developer be reimbursed for all Public Improvement Costs in an aggregate amount that exceeds the Reimbursement Cap. For the avoidance of doubt, no TIRZ Bonds shall mature beyond the expiration of the TIRZ and no reimbursements shall be made to the Developer beyond the expiration of the TIRZ.

ARTICLE III. **THE DEVELOPER COMMITMENTS**

3.1 City Regulation: As consideration for the City's obligations under this Agreement and in consideration for reimbursement hereunder, the Developer agrees that its development and use of the Project, including, without limitation, the construction, installation, maintenance, repair and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Solterra Development, shall be in compliance with the Solterra Development Agreement.

3.2 Payment of Taxes: The Developer agrees to pay all ad valorem taxes and assessments (unless otherwise exempted or abated) it owes to the City prior to such taxes and/or assessments becoming delinquent. Any reimbursements due pursuant to this Agreement shall be withheld by the City until such protest or contest reaches final resolution.

ARTICLE IV.
REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of City.

The City makes the following representations and warranties for the benefit of the Developer:

(a) **Due Authority; No Conflict:** The City has all requisite power and authority to execute this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute legal, valid and binding obligations enforceable against the City in accordance with the terms subject to principles of governmental immunity and the enforcement of equitable rights. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the City is a Party, or by which the City is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(b) **Due Authority; No Litigation:** No litigation is pending or, to the knowledge of the City, threatened in any court to restrain or enjoin the construction of or the Public Improvements or the City's payment and reimbursement obligations under this Agreement, or otherwise contesting the powers of the City or the authorization of this Agreement or any agreements contemplated herein.

4.2 Representations and Warranties of Developer:

The Developer makes the following representations, warranties and covenants for the benefit of the City:

(a) **Due Organization and Ownership:** The Developer is a Texas limited liability company, validly existing under the laws of the State of Texas and is duly qualified to do business in the State of Texas; and that the person executing this Agreement on behalf of the Developer is authorized to enter into this Agreement.

(b) **Due Authority; No Conflict:** The Developer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Developer and constitute the Developer's legal, valid and binding obligations enforceable against the Developer in accordance with their terms. The consummation by the Developer of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Developer, or any of the terms of any agreement or instrument to which the Developer is a Party, or by which the Developer is bound, or of any provision of any applicable

law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(c) **Consents:** No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of the Developer in connection with the execution and delivery of this Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.

(d) **Litigation/Proceeding:** To the best knowledge of the Developer, after reasonable inquiry, there are no pending or, to the best knowledge of the Developer, threatened, judicial, municipal or administrative proceedings, consent decree or, judgments which might affect the Developer's ability to consummate the transaction contemplated hereby, nor is there a preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and there is no statute, rule, regulation, or executive order promulgated to enacted by a governmental entity, that is in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement.

(e) **Legal Proceedings:** To the best knowledge of the Developer, after reasonable inquiry, no preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and no statute, rule, regulation, or executive order promulgated to enacted by a governmental entity, shall be in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, any of the principals of the Developer and any key person or their respective Affiliates and representatives which the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of the Developer under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

ARTICLE V.

DEFAULT AND REMEDIES

5.1 Developer Default:

Each of the following events shall be an "Event of Default" by the Developer under this Agreement:

(a) The failure by Developer or any Affiliate to pay Impositions, and Assessments on property owned by the Developer and/or any Affiliates within the TIRZ, if such failure is not cured within sixty (60) days after written notice by the City;

(b) The Developer shall fail to comply in any material respect with any term, provision or covenant of this Agreement, and shall not cure such failure within one sixty (60) days after written notice thereof is given by the City to the Developer;

(c) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;

(d) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

(e) 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 degree unstayed for any period of one hundred twenty (120) consecutive days;

(f) Any representation or warranty confirmed or made in this Agreement by the Developer was untrue in any material respect as of the Effective Date;

(g) The occurrence of an uncured Event of Default pursuant to the terms of the Solterra Development Agreement.

5.2 Notice and Cure Period:

(a) Upon an Event of Default under this Agreement the defaulting Party shall notify, in writing, the Party alleged to have failed to perform. No Event of Default under this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice, with completion of performance within ninety (90) days.

5.3 **City's Remedies:** With respect to the occurrence of an Event of Default the City may pursue the following remedies:

(a) The City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. Termination or non-termination of this Agreement upon a Developer Event of Default shall not prevent the City from suing the Developer for specific performance, damages, actual damages, excluding punitive, special and consequential damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination. The City may only terminate this Agreement upon an Event of Default if Developer was (i) provided with thirty (30) days written notice of the default, and (ii) given one hundred and twenty days (120) days from the beginning of the notice period to cure such Event of Default. If, at the end of the notice and cure period, the City is of the reasonable opinion that Developer is reasonably attempting or in the process of curing the Event of Default, then the City and Developer shall, within thirty (30) days of the end of the notice and cure period, meet in order for Developer to present its timeframe for curing the Event of Default. If Developer's timeframe to cure is acceptable to the City, the City shall extend, in writing, the notice and cure period. If Developer's timeframe to cure is not acceptable to the City, this Agreement shall be

deemed terminated. Upon termination by the City, the Developer shall assign to the City any of its contracts and agreements related to the Public Improvements requested by the City to be so assigned. The City shall reimburse the Developer for Public Improvements completed and accepted prior to termination. In the event the Developer fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, then to the extent such failure constitutes an Event of Default hereunder, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the amount so paid and the reasonable out of pocket costs incurred by the City in said performance shall be due and payable by the Developer to the City within thirty (30) days after the Developer's receipt of an itemized list of such costs and shall thereafter bear interest at the rate of 5.50%.

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

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

5.4 Effect of Termination: Upon termination of this Agreement all obligations of the City and the Board to reimburse the Developer pursuant to this Agreement shall cease. Any completed and accepted Public Improvement for which a Reimbursement Request has been submitted and approved by the City on the date of termination, shall be paid.

5.5 City Default:

Each of the following events shall be an Event of Default by the City under this Agreement:

(a) So long as the Developer has complied with the terms and provisions of this Agreement, the City shall fail to pay to the Developer any monetary sum hereby required of it, including Reimbursement Requests approved by the City.

(b) The City shall fail to comply in any material respect with any term, provision or covenant of this Agreement, other than the payment of money.

5.6 Developer's Remedies:

Upon the occurrence of any Event of Default by the City, the Developer may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages available under Section 5.7 of this Agreement and termination of this Agreement.

5.7 Limited Waiver of Immunity:

(a) 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.

(b) 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:

(i) 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 and is payable solely from City Tax Increment;

(ii) The recovery of damages against City or the Developer may not include consequential damages or exemplary damages;

(iii) The Parties may not recover attorney's fees; and

(iv) The Parties are entitled to specific performance or injunctive relief against the City.

5.8 Limitation on Damages:

In no event shall any Party have any liability under this Agreement for any exemplary or consequential damages.

5.9 Waiver:

Forbearance by the non-defaulting Party to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default by the other Party shall not be deemed or construed to constitute a waiver of such default. One or more waivers of a breach of any covenant, term or condition of this Agreement by either Party hereto shall not be construed by the other Party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either Party to or of any act by the other Party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any other subsequent similar act.

ARTICLE VI. NON-COMPLIANCE TAXABLE ASSESSED VALUE TARGET

6.1 Appraisal Disputes: Developer shall not protest and/or contest any assessment of the real property improvements of the Solterra Development by Dallas County Appraisal District.

6.2 Restriction on Transfer to Tax-Exempt Entities: Other than transfers of easements and rights-of-way to the City, the State or public utility companies, during the Term of this Agreement, no sale, transfer, or other conveyance of any real property within the Solterra Development may be made by the Developer or subsequent owner to an entity that claims exemption, or is exempt, from real property taxes for all or part of the real property in the Solterra Development (a "Restricted Entity") without the prior written approval of the City. In the event that the Developer,

or any subsequent owner seeks to transfer any property in the Project area to a Restricted Entity during the Term of the Agreement, such transfer may only occur upon the prior written approval of the City and upon the prior execution of a separate agreement between the purchasing Restricted Entity and the City. This requirement shall be a covenant running with the land and shall be enforceable, as applicable, during the Term of the Agreement as if the purchaser, transferee, or possessor of the real property were originally a party to and bound by this Agreement. The Developer agrees to execute a “Memorandum of Unrecorded Agreement” or similar document for filing with the official public records of the Dallas County Clerk memorializing this covenant to give notice to any subsequent purchaser, transferee, or possessor of the Property.

ARTICLE VII. TERM OF AGREEMENT

7.1 **Term:** This Agreement shall expire the earlier of the following to occur: (i) the expiration of the TIRZ, (ii) the reimbursement to the Developer up to Reimbursement Cap, or (iii) termination of this Agreement pursuant to an Event of Default. Provided however, that the use of TIRZ Revenues for (i) the subsidy for Assessments relating to PID Bonds or (ii) the payment of TIRZ Bonds shall continue until all PID Bonds and TIRZ Bonds are discharged or paid in full.

ARTICLE VIII. MISCELLANEOUS

8.1 **Article and Section Headings:** The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

8.2 **City Right of Audit:** During the term of this Agreement, the City has the right to audit all of Developer’s invoices related to the Public Improvement Project Costs to determine the actual amount of TIRZ Eligible costs incurred and paid in connection with the Public Improvement Project Costs. If the total actual TIRZ Eligible costs incurred and paid in connection with the Public Improvement Project Costs, is less than the Reimbursement Cap, then the reimbursement hereunder shall be reduced proportionately. For example, if the total actual TIRZ Eligible costs incurred and paid in connection with the Public Improvement Project Costs Project Costs are only 90% of the amount requested by Developer and approved by the City and/or the TIRZ Board, the reimbursement funds paid to Developer will be reduced by 10%. If reimbursement funds have already been disbursed, then within sixty (60) days after notice from the City, Developer shall repay the portion of such funds for which it is not eligible to receive payment hereunder.

8.3 **Venue and Choice of Law:** Texas law shall govern interpretation of this Agreement and all disputes hereunder. The Agreement is to be performed in Dallas, Texas, and venue for any dispute between the parties shall be fixed in Dallas, Texas.

8.4 **Signature Authority:** The persons executing this Agreement are authorized to sign this Agreement on behalf of the party for which they sign, and have the express power to bind the parties for which they sign.

8.5 **Notice:** Notices or correspondence under this Agreement to either party from the other may be personally delivered or sent by First Class Mail or other reliable courier to the addresses listed below. A party may, by written notification to the other party, change the address for notices to the party under this Agreement.

To the City: Attn: Cliff Keheley
Mesquite City Manager
PO Box 850137
Mesquite, TX 75185-0137
ckeheley@cityofmesquite.com

With a copy to: Attn: City Attorney
Mesquite City Attorney
PO Box 850137
Mesquite, TX 75185-0137

To the Developer: Attn: Phillip Huffines
8200 Douglas Avenue, Suite 300
Dallas, Texas 75525
pwh@huffinescommunities.com

With a copy to: Attn: Misty Ventura
Shupe Ventura, PLLC
9406 Biscayne Boulevard
Dallas, Texas 75218
misty.ventura@svlandlaw.com

8.6 **Assignment.**

(a) Developer may assign any receivables or revenues due pursuant to this Agreement to a third party without the consent of, but upon written notice to the City. Provided, however, that notwithstanding the above, the City shall not be required to make simultaneous partial payments to more than two parties as a result of an assignment and neither the Board nor the City shall be required to make any representations, sign any agreement or to consent to any such Assignment of revenues or receivables.

(b) The City does not and shall not consent to nor participate in any third-party financing based upon the Developer's assignment of its right to receive funds pursuant to this Agreement, the Reimbursement Agreement that would require the City to be a an "obligated party" pursuant to 17 CFR Section 210.15c2-12.

8.7 **No Acceleration:** Any payments made or due pursuant to this Agreement or remedies hereunder shall not be subject to acceleration.

8.8 **Agreement and Binding Authority:** This Agreement supersedes and constitutes a merger of all prior oral and/or written agreements and understandings of the parties on the subject matter of this Agreement and is binding on the parties and their legal representatives, receivers, executors, successors, agents and assigns.

8.9 **Severability; Waiver:**

(a) If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

(b) Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

8.10 **No Third-Party Beneficiaries:** The City, the Board and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third party beneficiary, or any individual or entity other than the City, the Developer or assignees of such Parties.

8.11 **No Joint Venture:** Nothing contained in this Agreement or any other agreement between the Developer and the City or the Board is intended by the Parties to create a partnership or joint venture between the Developer, on the one hand, and the City or the Board on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

8.12 **Legal Costs:** In the event City is required to employ an attorney or to use an attorney currently in its employ to enforce a provision of this Agreement or any part hereof, or is required to commence proceedings at law or in equity to enforce or interpret the provisions hereof, City shall be entitled to recover reasonable legal costs from the Developer.

8.13 **Anti-Boycott Verification:** The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating

business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

8.14 Iran, Sudan and Foreign Terrorist Organizations: The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

8.15 Petroleum.

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. The Developer understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit.

8.16 Firearms.

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas

Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, ‘discriminate against a firearm entity or firearm trade association’ (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association. As used in the foregoing verification, (b) ‘firearm entity’ means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and (c) ‘firearm trade association’ means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code. The Developer understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit.

8.17 Public Information: Notwithstanding any other provision to the contrary in this Agreement, all information, documents, and communications relating to this Agreement may be subject to the Texas Public Information Act and any opinion of the Texas Attorney General or a court of competent jurisdiction relating to the Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Developer agrees that this Agreement may be terminated if the Developer knowingly or intentionally fails to comply with a requirement of that subchapter, if applicable, and the Developer


fails to cure the violation on or before the tenth business day after the date the City provides notice to Developer of noncompliance with Subchapter J, Chapter 552. Pursuant to Section 552.372, Texas Government Code, Developer is required to preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to the City for the duration of this Agreement; promptly provide to the City any contracting information related to this Agreement that is in the custody or possession of the Developer on request of the City; and on completion of the Agreement, either provide at no cost to the City all contracting information related to the contract that is in the custody or possession of the entity or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the City.

8.17 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

(execution block on the next page)

EXECUTED this 17th day of July, 2023.

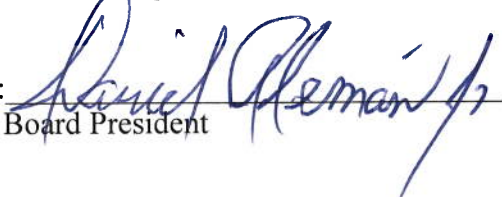
CITY OF MESQUITE, TEXAS

By: 
Mayor

ATTEST:


City Secretary

CITY OF MESQUITE TAX INCREMENT REINVESTMENT ZONE NUMBER 15

By: 
Board President

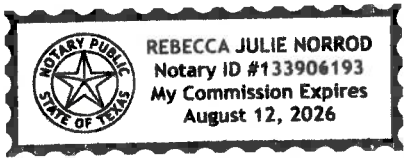
Developer:

HC Solterra, LLC,
a Texas limited liability company

By: *Phillip W. Huffines*
Phillip Huffines, Managing Director
or
Donald Huffines, Managing Director

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 26th day of JUNE, 2023 by Phillip W. Huffines, Managing Director of HC Solterra, LLC, a Texas limited liability company, on behalf of said company.



Rebecca Julie Norrod
Notary Public, State of Texas

EXHIBIT A

REIMBURSEMENT PAYMENT REQUEST

REIMBURSEMENT REQUEST NO. _____

Reference is made to that certain TIRZ Reimbursement Agreement by and between the City and tHC Solterra, LLC, a Texas limited liability company (the “Developer”), dated as of _____ (the “Agreement”). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

The undersigned is an agent for the Developer and requests reimbursement to the Developer (or to the person designated in writing by the Developer) from the identified subaccount of the Tax Tax Increment Fund related to the reimbursement of Project Costs as set forth in the Agreement.

In connection with the above referenced payment, the Developer represents and warrants to the City and Board as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Reimbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The itemized payment requested for the below referenced Public Improvement Project Costs has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The itemized amounts listed for the Public Improvement Project Costs below is a true and accurate representation of the Public Improvement Project Costs associated with the creation, acquisition, or construction of said Public Improvement Project Costs and such costs (i) are in compliance with the Agreement, and (ii) are consistent with and within the costs identified for such Public Improvement Project Costs as set forth in the Agreement.
4. The Developer is in compliance with the terms and provisions of the Agreement.
5. The Developer has timely paid all ad valorem taxes it owes or an entity the Developer controls owes, located in the Zone and has no outstanding delinquencies.
6. All conditions set forth in the Agreement for the payment hereby requested have been satisfied.
7. The work with respect to the Public Improvement Project Costs referenced below been completed, and the City has inspected and accepted such Public Improvements.

8. The Developer agrees to cooperate with the City in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

9. Attached hereto is the completed spreadsheet required by the City's TIRZ consultant and all documentation requested in order to make payment hereunder, including invoices, receipts, purchase orders, change orders, evidence of payment of invoices including "all bills paid" affidavits, and similar instruments which support and validate the above requested payments. Also attached hereto are "**bills paid**" affidavits and supporting documentation in the standard form for City construction projects.

Payments requested hereunder shall be made as directed below:

I hereby declare that the above representations and warranties are true and correct.

By: _____

Name: _____

Title: _____

Date: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Reimbursement Request, acknowledges the Reimbursement Request, and finds the Reimbursement Request to be in order. After reviewing the Reimbursement Request, the City approves the Reimbursement Request to the extent of the payment identified herein and authorizes and directs payment in such amounts and from the accounts listed in the attached spreadsheet prepared by the City's TIRZ consultant, to the Developer or other person designated by the Developer in writing.

CITY OF MESQUITE, TEXAS

By: _____

Name: _____

Title: _____

Date: _____