

RESOLUTION NO. 54-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING; A FIRST AMENDMENT TO TIRZ NO. 12 REIMBURSEMENT AGREEMENT, REPURCHASE OPTION AGREEMENT, AND CITY CHAPTER 380 INCENTIVE AND PERFORMANCE AGREEMENT (“FIRST AMENDMENT”) WITH IH 20 IP, LLC (THE “DEVELOPER”), AND THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NO. 12, CITY OF MESQUITE, TEXAS (IH-20 BUSINESS PARK) (THE “TIRZ”), REGARDING THE DEVELOPER’S CONSTRUCTION OF AN APPROXIMATELY 210.026-ACRE CLASS A INDUSTRIAL PARK IN THE TIRZ LOCATED AT 925 MCKENZIE ROAD, 3400 MCKENZIE ROAD, 2700 MCKENZIE ROAD, 4800 LASATER ROAD, AND 4900 LASATER ROAD, MESQUITE, TEXAS, AND THE ACQUISITION FROM THE CITY AND BY THE DEVELOPER OF APPROXIMATELY 100.264 ACRES OF LAND IN THE TIRZ AND LOCATED AT 925 MCKENZIE ROAD AND 3400 MCKENZIE ROAD, MESQUITE, TEXAS, AND THE GRANTING TO THE DEVELOPER OF CERTAIN TIRZ REIMBURSEMENTS AND ECONOMIC DEVELOPMENT INCENTIVES; AND AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE FIRST AMENDMENT AND TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE FIRST AMENDMENT, AND ADMINISTER THE FIRST AMENDMENT ON BEHALF OF THE CITY.

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

WHEREAS, on July 2, 2018, by City Ordinance No. 4579 (“**Ordinance No. 4579**”), the City created Reinvestment Zone Number Twelve, City of Mesquite, Texas (IH-20 Business Park), a tax increment reinvestment zone created pursuant to Chapter 311 of the Texas Tax Code (the “**Act**”) consisting of approximately 248.1466 acres of land which included the following six tracts of land: (1) 4300 Lawson Road; (2) 3400 McKenzie Road; (3) 4800 Lasater Road; (4) 4900 Lasater Road; (5) 2700 McKenzie Road; and (6) 925 McKenzie Road and located within the corporate limits of the City of Mesquite, Dallas County, Texas, and being more particularly described and depicted in Exhibits “A” and “B” to Ordinance No. 4579 (the “**TIRZ**”) and established a Board of Directors for the TIRZ (the “**TIRZ Board**”); and

WHEREAS, on July 6, 2021, by City Ordinance No. 4876 (“**Ordinance No. 4876**”), the TIRZ boundaries were enlarged and the geographic area was increased to include approximately 13 acres of City rights-of-way adjacent to the Original TIRZ Boundaries and approximately 828

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acres of noncontiguous land generally located south of Scyene Road, west of Lawson Road, north of Berry Road, and east of Ashley Furniture Industries Distribution Center and being located within the corporate limits and extraterritorial jurisdiction of the City as more particularly described and depicted in Exhibits “B” and “B-1” to Ordinance No. 4876 ; and

WHEREAS, the City created the TIRZ to promote development or redevelopment in the TIRZ, in accordance with the Act; and

WHEREAS, on July 6, 2021, the TIRZ 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 6, 2021, by City Ordinance No. 4877, the City Council approved a project plan and reinvestment zone financing plan for the TIRZ (such project plan and reinvestment zone financing plan, as thereafter amended, being hereinafter referred to as the “**TIRZ Project and Financing Plan**”); and

WHEREAS, on March 21, 2022, the TIRZ Board approved an amended 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 March 21, 2022, by City Ordinance No. 4944, the City Council approved an amended project plan and reinvestment zone financing plan for the TIRZ; and

WHEREAS, on May 15, 2023, the TIRZ Board approved a second amended 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 May 15, 2023, by City Ordinance No. 5023, the City Council approved a second amended project plan and reinvestment zone financing plan for the TIRZ; and

WHEREAS, on May 15, 2023, the TIRZ Board approved a TIRZ No. 12 Reimbursement Agreement, Repurchase Option Agreement, and City Chapter 380 Incentive and Performance Agreement (“**Agreement**”) between the City, TIRZ Board and IH 20 IP, LLC, a Texas limited liability company (the “**Developer**”), and recommended approval of such Agreement to the City Council for approval; and

WHEREAS, on May 15, 2023, by City Resolution No. 21-2023, the City Council approved the Agreement; and

WHEREAS, the City and TIRZ Board may enter into additional TIRZ Reimbursement Agreements with entities related to the Developer (“**Related Agreements**”) for the TIRZ and, along with the Developer, desire that payment of TIRZ Reimbursements be paid on a pro-rata basis based upon completion of the TIRZ public improvements; and

WHEREAS, on October 16, 2023, the TIRZ Board approved a First Amendment to Agreement (“**First Amendment**”), a copy of which is attached hereto as Exhibit A and

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incorporated herein by reference, and recommended approval of such First Amendment to the City Council; and

WHEREAS, the City Council has been presented with the proposed First Amendment Agreement, which proposes to modify the payment of the TIRZ Reimbursement in the Agreement so that it will be paid pro-rata basis based upon other Related Agreements for TIRZ reimbursements; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the First Amendment is in the best interest of the City and TIRZ, and will benefit the City and its citizens.

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

SECTION 1. The facts, findings, and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. The City Council finds that the First Amendment is in the best interest of the City and TIRZ, will benefit the City, TIRZ, and its citizens, and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City and TIRZ in accordance with Section 380.001 of the Texas Local Government Code.

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

SECTION 4. The City Manager is hereby authorized to: (i) finalize and execute the First Amendment; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the First Amendment.

SECTION 5. The City Manager is further hereby authorized to administer the First Amendment on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the First Amendment; (ii) approve further amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the First Amendment that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the First Amendment; (v) exercise any rights and remedies available to the City under the First Amendment; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City

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Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of October 2023.

DocuSigned by:

Daniel Aleman Jr.

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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 A

FIRST AMENDMENT TO TIRZ NO. 12 REIMBURSEMENT AGREEMENT,

REPURCHASE OPTION AGREEMENT,

AND

CITY CHAPTER 380 INCENTIVE AND PERFORMANCE AGREEMENT

BETWEEN

IH 20 IP, LLC,

THE BOARD OF DIRECTORS OF TIRZ NO. 12 (IH-20 BUSINESS PARK),

AND THE CITY OF MESQUITE

**FIRST AMENDMENT TO TIRZ #12 REIMBURSEMENT AGREEMENT,
REPURCHASE OPTION AGREEMENT,
AND
CITY CHAPTER 380 INCENTIVE AND PERFORMANCE AGREEMENT
IH 20 IP, LLC (IH-20 BUSINESS PARK)**

This First Amendment to TIRZ #12 Reimbursement Agreement, Repurchase Option Agreement and City Chapter 380 Incentive and Performance Agreement (“First Amendment”) is made by and among the City of Mesquite, Texas (the “City”), Board of Directors of Reinvestment Zone Number Twelve, City of Mesquite, Texas (IH-20 Business Park) (the “Board”), and IH 20 IP, LLC, a Texas limited liability company (the “Developer”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, the Parties entered into that certain TIRZ #12 Reimbursement Agreement, Repurchase Option Agreement and City Chapter 380 Incentive and Performance Agreement with an effective date of July 12, 2023 (“Development Agreement”), concerning a Chapter 380 Grant and a TIRZ Reimbursement for Infrastructure Improvements; and

WHEREAS, the Developer has requested, and the City agrees, to modify the payment of the TIRZ Reimbursement so that it will be paid pro-rata based upon other Related Agreements for TIRZ reimbursements.

NOW THEREFORE, for and in consideration of these premises and of the mutual promises, obligations, covenants and benefits herein contained, the Parties contract and agree to amend the Development Agreement as follows:

1. **Capitalized Terms**. All capitalized terms in this First Amendment, not otherwise defined herein, shall have the same meanings as assigned to the terms in the Development Agreement.
2. **Amendments**. The Development Agreement is hereby amended as follows:
 - a. **Article I, Definitions**. The definition of “Related Agreement” is replaced in its entirety to read as follows:

“Related Agreement” shall mean any agreement (other than this Agreement) by and between the City and/or the Board and the Developer, including but not limited to any Chapter 380 Grant assignment documents, and any other agreements related to the development of property within the Zone or providing incentives related to property in the zone with Developer, and any affiliate, subsidiary, business, related-entity, or entities with one or more common owners or investors of Developer. As of October 23, 2023 the two Related Agreements are “TIRZ #12 Reimbursement Agreement and Performance Agreement MSAP 216, LLC and 42 BP, LP (Airport East)” and “TIRZ #12 Reimbursement Agreement, Repurchase Option Agreement, and City Chapter 380 Incentive and Performance Agreement IH 20 IP, LLC (IH-20 Retail)”.

- b. Section 3.3(d). Section 3.3(d) is replaced in its entirety to read as follows:

Funds for TIRZ Reimbursement. The Parties hereto acknowledge that the TIRZ Reimbursement and Water Line Reimbursement to be made to Developer shall come solely from the TIRZ Funds. After (i) payment of the City's administrative costs and professional services for the Zone, (ii) reduction of the TIRZ Reimbursement and/or reduction of any Water Line Reimbursement as set forth in this Agreement, and (iii) proportional payments are made to the City to reimburse the City for the design and construction of the McKenzie Road Improvements and Sewer Line A, the City hereby represents to Developer that 100% of the TIRZ Funds shall be used solely to make TIRZ Reimbursements due under this Agreement and Related Agreements on a pro-rata basis, which shall be based upon the amount of any approved Payment Request(s)/request for payment for Developer under this Agreement and for a party to a Related Agreement, and costs incurred by City under a Related Agreement for infrastructure, until the entire TIRZ Reimbursement and any Water Line Reimbursement, as it may be reduced hereunder, is paid to Developer. Payments of TIRZ Funds to the Developer and to the City shall be made in proportion to the amount due to the City for its costs to design and construct the McKenzie Road Improvements and Sewer Line A and the amount due to the Developer for the TIRZ Reimbursement and any Water Line Reimbursement. For the sole purpose for providing an example of proportionate payments, if Developer is owed \$20,000,000 for TIRZ Reimbursement and the City is owed \$5,000,000 for the McKenzie Road Improvements, and the TIRZ Fund (after reductions allowed herein) has \$1,000,000 of revenue available for the year, \$800,000 would be paid to Developer and \$200,000 would be paid to the City. If payments are owed under a Related Agreement, then payments to the City and Developer shall be reduced proportionately by the pro-rata payments under the Related Agreement(s). The TIRZ Reimbursement and any Water Line Reimbursement payable by the City and/or Board to the Developer is payable only from the TIRZ Funds and is not secured by a pledge of ad valorem taxes, or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. Payment of the TIRZ Reimbursement and any Water Line Reimbursement is subject to the Board's and/or City's appropriation of funds for such purpose to be paid in the budget year for which such installment is to be paid, but neither the City nor the Board shall unreasonably withhold payment. This Article III, Section 3.3(d) shall expressly survive the expiration or termination of this Agreement.

3. **Ratification of Development Agreement**. Except as provided herein, all terms and provisions of the Development Agreement and the rights of the Parties thereunder shall remain unchanged and in full force and effect. The Development Agreement, as modified and amended hereby, is hereby ratified, and confirmed in all respects. In the event of a conflict between the terms of the Development Agreement and the terms hereof, the terms of this First Amendment shall control. From and after the date hereof, all references to the Development Agreement shall be deemed references thereto as amended hereby.

4. **Interpretation.** The Parties acknowledge that each of them has been actively involved in negotiating this First Amendment. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this First Amendment. In the event of any dispute over the meaning or application of any provision of this First Amendment, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

5. **Enforceability.** Each Party acknowledges and agrees that this First Amendment is binding upon such Party and enforceable against such Party in accordance with its terms and conditions.

6. **Merger.** This First Amendment together with the Development Agreement shall constitute the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this First Amendment and the Development Agreement.

6. **Counterparts.** This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to be effective as of the Effective Date. This First Amendment shall be filed in the land records of the county.

[SIGNATURE PAGES IMMEDIATELY FOLLOW THIS PAGE]

CITY:

CITY OF MESQUITE, TEXAS

ATTEST:

Name: Sonja Land
Title: City Secretary

By: _____
Name: Cliff Keheley
Title: City Manager

APPROVED AS TO LEGAL FORM:

Name: David L. Paschall
Title: City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas home rule municipality, on behalf of said home rule municipality.

NOTARY PUBLIC, State of Texas

My Commission Expires: _____

Notary Seal

BOARD:

Board of Directors of Reinvestment Zone
Number Twelve, City of Mesquite, Texas (IH-20
Business Park)

ATTEST:

Name: Sonja Land
Title: City Secretary

By: _____
Name: Daniel Alemán, Jr
Title: Chairman

APPROVED AS TO LEGAL FORM:

Name: David L. Paschall
Title: City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Daniel Alemán, Jr, Reinvestment Zone Number 12, City of Mesquite (IH-20 Business Park) Board Chairman, on behalf of said Board.

NOTARY PUBLIC, State of Texas

My Commission Expires: _____

Notary Seal

DEVELOPER:

IH 20 IP, LLC , a Texas limited liability company

By: 42 BP, LP, a Texas limited partnership, a Manager of IH 20 IP, LLC

By: _____

Name: Scott Rohrman

Title: Manager of the GP of 42 BP, LP

By: SLJ Equities, LLC, a Texas limited liability company, a Manager of IH 20 IP, LLC

By: _____

Name: Louis H. Lebowitz

Title: President of SLJ Equities, LLC

STATE OF TEXAS §

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COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Scott Rohrman, as the Manager of the GP of 42 BP, LP as a Manager of IH 20 IP, LLC, on behalf of said entities.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal

STATE OF TEXAS §

§

COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2023, by Louis H. Lebowitz, as the President of SLJ Equities, LLC as a Manager of IH 20 IP, LLC, on behalf of said entities.

NOTARY PUBLIC, State of Texas

My Commission Expires: