

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, REPEALING RESOLUTION NO. 43-2019, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO NEGOTIATE, FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH MM MESQUITE 50, LLC, A TEXAS LIMITED LIABILITY COMPANY (THE "DEVELOPER"), PROVIDING A GRANT TO REIMBURSE THE DEVELOPER FOR CERTAIN COSTS AND EXPENSES INCURRED BY THE DEVELOPER IN CONNECTION WITH THE DESIGN AND RECONSTRUCTION OF A PORTION OF PEACHTREE ROAD LOCATED WITHIN MESQUITE RODEO CITY REINVESTMENT ZONE NUMBER ONE, CITY OF MESQUITE, TEXAS, AS PART OF A MIXED USE DEVELOPMENT CONTAINING RETAIL, RESTAURANT, OFFICE, RESIDENTIAL COMPONENTS AND OTHER ASSOCIATED USES IN ACCORDANCE WITH CITY ORDINANCE NO. 4595 (THE "IRON HORSE PROJECT") IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, on June 3, 2019, the City Council of the City (the "City Council") was presented with a proposed agreement providing economic development incentives (the "Draft Agreement") to MM Mesquite 50, LLC, a Texas limited liability company (the "Developer"), providing a grant to reimburse the Developer for certain costs and expenses incurred by the Developer in connection with the design and reconstruction of a portion of Peachtree Road located within Mesquite Rodeo City Reinvestment Zone Number One, City of Mesquite, Texas, as part of a mixed use development containing retail, restaurant, office, residential components and other associated uses in accordance with City Ordinance No. 4595 (the "Iron Horse Project"), and, following a public hearing, approved the Draft Agreement by Resolution No. 43-2019; and

WHEREAS, additional revisions were made to the Draft Agreement necessitating further review and consideration by the City Council; a copy of the revised document being attached as Exhibit "A" and incorporated herein by reference (the "Final Agreement"); and

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

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

SECTION 1. The City Council hereby repeals Resolution No. 43-2019, finds that the terms and conditions of the Final Agreement, having been reviewed by the City Council and a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, is in the best interest of and will benefit the City and its citizens and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code, finds the Final Agreement is acceptable and hereby approves the Final Agreement.

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

SECTION 3. The City Manager is hereby authorized to negotiate, finalize and execute the Final Agreement and all other documents necessary to consummate the transactions contemplated by the Final Agreement and is further hereby authorized to administer the Final Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Final Agreement; (ii) approve amendments to the Final Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Final Agreement in excess of \$50,000; (iii) approve or deny any matter in the Final Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Final Agreement that requires the consent of the City pursuant to the terms of the Final Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Final Agreement; (v) exercise any rights and remedies available to the City under the Final Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 3 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 3 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 4. The sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 5th day of August 2019.

Stan Pickett
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT “A”

**Chapter 380 Agreement between
The City of Mesquite and MM Mesquite 50, LLC**

PEACHTREE ROAD ECONOMIC DEVELOPMENT AGREEMENT

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

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

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

WHEREAS, the Developer has agreed to make improvements to Peachtree Road as set forth in Exhibit J to the Iron Horse Development Agreement (the "Peachtree Road Improvements"); and

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

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

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

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

1. **Definitions.**

“Actual Costs” means the demonstrated, reasonable, allocable, and allowable costs of constructing the Peachtree Road Improvements. Actual Costs may include: (1) the costs incurred by, caused to be incurred by, or on behalf of the Developer (either directly or through Affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Peachtree Road Improvements; (2) the fees paid for obtaining permits, licenses, or other governmental approvals for such Peachtree Road Improvements; (3) the costs incurred by or on behalf of the Developer for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, accounting, and similar professional services; (4) all labor, bonds, and materials by contractors, builders, and materialmen in connection with the acquisition, construction, or implementation of the Peachtree Road Improvements; and (5) all related permitting and public approval expenses, architectural, engineering, and consulting fees, taxes, and governmental fees and charges.

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

“Calendar Quarter” means the following periods: January through March, April through June, July through September, and October through December.

“City Tract” means that approximately 5.315 acre tract of property owned by the City located within the Iron Horse Project and being more particularly described in Exhibit A-2 to the Iron Horse Development Agreement.

“Commencement of Construction of the Peachtree Road Improvements” means that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Peachtree Road Improvements; (ii) all necessary permits for the initiation of construction of the Peachtree Road Improvements pursuant to the plans therefore having been issued by all applicable governmental authorities; (iii) grading of Peachtree Road for the construction of the Peachtree Road Improvements, or portion thereof, as the case may be, has commenced; and (iv) construction of the Peachtree Road Improvements has commenced to the satisfaction of the City Manager of the City which shall be upon completion of five percent (5%) of the Peachtree Road Improvements.

“Completion of Construction” shall mean that the construction of the Peachtree Road Improvements has been substantially completed pursuant to the City’s determination; and the City has with respect to the Peachtree Road Improvements accepted the Peachtree Road Improvements by City Acceptance Letter, subject to Force Majeure.

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

“Force Majeure” means any act that (i) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (ii) is beyond the reasonable control of the affected Party, (iii) is not due to the affected Party’s fault or negligence and (iv) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts. “Force Majeure” shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (e) fires; and (f) actions or omissions of a Governmental Authority (including the actions of the City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law or failure to comply with City regulations; provided, however, that under no circumstances shall Force Majeure include any of the following events: (u) economic hardship; (v) changes in market condition; (w) any strike or labor dispute involving the employees of the Developer or any Affiliate of the Developer, other than industry or nationwide strikes or labor disputes; (x) weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (y) the occurrence of any manpower, material or equipment shortages; or (z) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Developer, or any construction contracts for the Peachtree Road Improvements.

“Governmental Authority” means any federal, state or local governmental entity (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Applicable Law, pursuant to the terms of this Agreement or by agreement of the Parties.

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

“Peachtree Road Improvements Completion Date” means the date, subject to Force Majeure, that is the earlier of: (i) eighteen (18) months after Commencement of Construction of the Peachtree Road Improvements; or (ii) February 5, 2022.

“Residential Tract” shall mean the portion of the Iron Horse Project where the following residential uses are planned: Zero Lot Line residential use, Villa residential use, Bungalow residential use and Townhome residential use as depicted on the Concept Plan attached as Exhibit C to the Iron Horse Development Agreement.

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

Government Code Section 2264.001(4), as hereafter amended or replaced or any other applicable law or regulations.

2. **Term.** This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the earlier of (i) the Grant (hereinafter defined) is paid in full to the Developer; (ii) the termination of this Agreement upon a Developer Event of Default or a termination pursuant to Section 7 of this Agreement; or (iii) the expiration or termination of the Iron Horse Development Agreement as set forth in Article XIII therein.

3. **Developer's Obligations.**

(a) **Construction of the Peachtree Road Improvements.** In consideration of the City entering into this Agreement providing for the payment of funds constituting the Grant (hereinafter defined) to Developer under the terms and conditions set forth herein, Developer agrees to design and construct or cause to be designed and constructed the Peachtree Road Improvements as set forth in Exhibit J to the Iron Horse Development Agreement.

(b) **Setting Aside Funds.** Developer shall set aside \$650,000 of funds within its private construction loan financing to pay the costs of the Peachtree Road Improvements. Such funds shall be set aside solely for the construction of the Peachtree Road Improvements.

(c) **Compliance with Laws and Regulations.** The Developer shall construct, or cause to be constructed, the Peachtree Road Improvements in accordance with all applicable state and local laws and regulations, zoning ordinances and all other ordinances and regulations, including, without limitation, all City codes, ordinances and regulations, and in compliance with the Iron Horse Development Agreement.

(d) **Approvals.** The Developer shall obtain all necessary permits, applications and other approvals with any pertinent federal, state or local entity for the construction of the Peachtree Road Improvements. Prior to initiating construction of the Peachtree Road Improvements, Developer shall make, or cause to be made, all necessary applications for the construction of the Peachtree Road Improvements and shall not proceed with any work prior to obtaining any necessary approvals for such work.

4. **Grants by City.**

(a) In exchange for Developer's compliance with all terms and provisions of this Agreement, City shall, as an incentive, grant to the Developer an amount equal to the lesser of (i) the Actual Costs of the Peachtree Road Improvements plus accrued interest on the private construction loan financing, which interest component shall only be that accrued on \$650,000 or (ii) \$694,000 (such amount, the "Grant"), all reimbursements to be payable solely from roadway impact fees previously collected by the City on the Residential Tract within the Iron Horse Project, up to the limit set forth in this Section 4(a).

(b) The City shall segregate all roadway impact fees collected by the City on the Residential Tract up to the limit set forth in Section 4(a) above, into a separate account for the payment of the Grant as set forth herein.

(c) The Grant shall be payable to the Developer in quarterly installments upon satisfaction of the conditions set forth in Section 5 below including, without limitation, Completion of Construction of the Peachtree Road Improvements has occurred on or before the Peachtree Road Improvements Completion Date, and the City has verified Developer's expenditures in connection with the Peachtree Road Improvements. The first quarterly installment payment of the Grant shall be payable thirty (30) days after the last day of the first full Calendar Quarter after all conditions set forth in Section 5 below have been satisfied. The subsequent quarterly installment payments shall be payable thirty (30) days after the last day of each Calendar Quarter thereafter until the Grant is paid in full. The first quarterly installment payment shall be in the amount equal to the lesser of: (i) the amount of the Grant; and (ii) the roadway impact fees previously paid to the City at the time residential building permits are issued in connection with the development of the Residential Tract and on deposit in the segregated account referenced in Section 4(b) above as of the last day of the first full Calendar Quarter after all conditions set forth in Section 5 below have been satisfied. Each subsequent quarterly installment payment shall be in the amount equal to the lesser of: (i) the roadway impact fees paid to the City in connection with residential building permits issued by the City in connection with the development of the Residential Tract during the Calendar Quarter preceding such quarterly installment payment and on deposit in the segregated account referenced in Section 4(b) above as of the last day of the preceding Calendar Quarter; and (ii) the remaining amount of the Grant, provided, however, in no event shall the collective quarterly installment payments exceed the amount of the Grant.

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

(a) Developer shall have submitted all plans and specifications for the Peachtree Road Improvements to the City and the City shall have approved such plans and specifications prior to Commencement of Construction of the Peachtree Road Improvements;

(b) The Peachtree Road Improvements shall have reached Completion of Construction on or before the Peachtree Road Improvements Completion Date in accordance with the approved plans and specifications;

(c) Commencement of Construction of the Peachtree Road Improvements shall have occurred no later than August 5, 2020;

(d) The Developer shall have submitted documentation of costs paid by the Developer for the Peachtree Road Improvements, including invoices, all-bills paid affidavits, release of lien documents and other evidence as reasonably required by the City to verify the expenditures for the Peachtree Road Improvements and the City's engineer shall have verified such expenditures;

(e) The Developer shall not have delivered any residential lots to any third parties prior to the completion and acceptance of the Peachtree Road Improvements;

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

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

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

(i) No development fees owed to the City by the Developer or any Affiliates (including all plat review fees, plan review and permit fees, inspection fees, and impact fees) are delinquent as of each quarterly payment of the Grant.

6. **Indemnification.**

DEVELOPER IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PEACHTREE ROAD IMPROVEMENTS. DEVELOPER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, IN THEIR PUBLIC CAPACITY, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITIES OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF, LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, EXCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES.

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

- (a) This Agreement is terminable by written agreement of the Parties.
- (b) This Agreement is terminable by the City upon the following occurrences:
 - (i) A Developer Event of Default under this Agreement;
 - (ii) An Event of Default by the Developer pursuant to Article XIV of the Iron Horse Development Agreement, subject to any applicable notice and cure provisions therein;
 - (iii) Commencement of Construction of the Peachtree Road Improvements has not occurred on or before August 5, 2020;
or

- (iv) Completion of Construction of the Peachtree Road Improvements has not occurred on or before the Peachtree Road Improvements Completion Date.
- (c) This Agreement is terminable by the Developer upon the following occurrences:
 - (i) The Developer has otherwise met all conditions for the Grant and the City does not make the Grant payments as set forth herein; or
 - (ii) The City or the Developer terminates the Iron Horse Development Agreement pursuant to a right to terminate set forth in the Iron Horse Development Agreement and Commencement of Construction of the Peachtree Road Improvements has not begun.
- (d) **Events of Default.** The following are events of default of the Developer under this Agreement (each a "Developer Event of Default"):
 - (i) Completion of Construction of the Peachtree Road Improvements has not occurred on or before the Peachtree Road Improvements Completion Date, subject to Section 7(d)(iii) herein;
 - (ii) Commencement of Construction of the Peachtree Road Improvements has not occurred on or before August 5, 2020, subject to Section 7(d)(iii) herein;
 - (iii) 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 ninety (90) days after written notice thereof is given by the City to the Developer;
 - (iv) The Developer shall fail to comply in any material respect with any term, provision or covenant of that certain City Tract Economic Development Agreement between the Developer and the City dated effective of even date herewith, and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the Developer;
 - (v) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

- (vi) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;
- (vii) The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days; or
- (viii) The failure by Developer or any Affiliates to pay City ad valorem taxes or any assessments on property owned by the Developer and/or any Affiliates within the Iron Horse Project if such failure is not cured within thirty (30) days after written notice by the City.

8. **City's Remedies.** With respect to the occurrence of a Developer 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. The City shall not terminate this Agreement unless it delivers to the Developer a second notice expressly providing that the City will terminate within thirty (30) additional days. 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.

(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.

(d) If the City Tract has been transferred by the City to the Developer at the time of any termination of this Agreement by the City pursuant to Section 7(b) and/or Section 8(a) of this Agreement, the Developer shall transfer the City Tract to the City at no cost to the City, and such obligation of the Developer shall expressly survive the termination of this Agreement.

9. **Developer Remedies.** Upon the failure of the City to comply in any material respect with any term, provision or covenant of this Agreement within thirty (30) days after written notice by the Developer to the City, the Developer may pursue any legal remedy or remedies available to the Developer pursuant to the laws of the State of Texas (specifically excluding specific performance and other equitable remedies and specifically excluding punitive,

special and consequential damages), and termination of this Agreement; provided, however, that the Developer shall have no right to terminate this Agreement unless the Developer delivers to the City a second notice which expressly provides that the Developer will terminate within thirty (30) days if the default is not addressed as herein provided.

10. **Force Majeure.**

Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed by Force Majeure, the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any Force Majeure events shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event and the length the Force Majeure event is reasonably expected to last not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a Force Majeure event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Agreement. The number of days a Force Majeure event is in effect shall be determined by the City based upon commercially reasonable standards.

11. **General Provisions.**

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

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

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

- i. The City and the Developer hereby acknowledge and agree that to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, the City's immunity from suit is waived only as set forth in such statute.
- ii. Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- 1) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Agreement;
- 2) The recovery of damages against City or the Developer may not include consequential damages or exemplary damages;
- 3) The Parties may not recover attorney's fees; and
- 4) The Developer is not entitled to specific performance or injunctive relief against the City.

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

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

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

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

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

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

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

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

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

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

(k) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

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

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

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

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

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

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

(r) **No Third-Party Beneficiaries.** The provisions of this Section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

(s) **Grant Funds.** The Grant is payable solely from roadway impact fees received by the City from the Residential Tract within the Iron Horse Project, if received, and shall not be payable from any other funds of the City.

12. **Anti-Boycott Verification.** The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates (as defined below), 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 2270.002, 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 'affiliates' for purposes of this Section 12, to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

13. **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 (defined below) 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 "affiliates" for purposes of this Section 13, to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

14. **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

15. **Undocumented Workers.**

(a) **Covenant Not to Employ Undocumented Workers.** The Developer hereby certifies that the Developer and each branch, division, and department of the Developer does not employ

any Undocumented Workers and the Developer hereby covenants and agrees that the Developer and each branch, division, and department of the Developer will not knowingly employ any Undocumented Workers during the term of this Agreement.

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

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

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

(e) Remedy for Violation. The City shall have the right to exercise all remedies available by law to collect any sums due by the Developer to the City pursuant to Section 15 of this Agreement including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

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

(g) Survival. The terms, provisions, covenants, agreements and obligations of the Developer and the rights and remedies of the City set forth in Section 15 of this Agreement shall expressly survive the expiration or termination of this Agreement.

Signature pages follow

EXECUTED on this _____ day of _____, 2019.

CITY OF MESQUITE, TEXAS

By: _____
City Manager

ATTEST:

City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

EXECUTED on this 2nd day of August, 2019.

MM Mesquite 50, LLC,
a Texas limited liability company

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

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

By: 
Name: Mehrdad Moayed
Its: Manager