RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING A REIMBURSEMENT AGREEMENT RELATING TO THE HEARTLAND TOWN CENTER PUBLIC IMPROVEMENT DISTRICT PHASE #2 SPECIFIC IMPROVEMENTS.

WHEREAS, the City of Mesquite, Texas (the **"City"**), pursuant to and in accordance with the terms, provisions, and requirements of the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code (the **"PID Act"**), has previously established the Heartland Town Center Public Improvement District (the **"District"**), pursuant to a Resolution adopted by the City Council of the City (the **"City Council"**) on December 18, 2017; and

WHEREAS, the District Property is being developed in accordance with that certain "Heartland Town Center Development Agreement," executed by and between CADG Kaufman 146, LLC (**"CADG"**), and the City effective April 2, 2018, as amended (together, the **"Development Agreement"**); and

WHEREAS, CADG assigned a portion of its rights and obligations under the Development Agreement to D.R. Horton-Texas, Ltd. (the **"Developer"**), pursuant to that certain Partial Assignment and Assumption of Heartland Town Center Development Agreement dated August 1, 2018, executed by D.R. Horton-Texas, Ltd., and CADG; and

WHEREAS, the District is being developed in phases, and special assessments for each phase have been or will be levied against property within such phase to pay the costs of authorized improvements that confer a special benefit on the assessed property within such phase; and

WHEREAS, Phase #2 Specific Improvements are to be constructed to serve Phase #2 of the District, as to be described and depicted in the Service and Assessment Plan (**"SAP"**); and

WHEREAS, the City Council intends to pass and approve an Ordinance (the **"Assessment Ordinance"**), which, among other things, will approve the SAP (including the amended Phase #2 Assessment Roll), will levy assessments on property within Phase #2 of the District for the Phase #2 Specific Improvements (the **"Assessments"**), and will establish the dates upon which interest on Assessments will begin to accrue and collection of Assessments will begin; and

WHEREAS, all revenue received and collected by the City from the collection of the Assessments and Annual Installments (excluding Delinquent Collection Costs and Administrative Expenses) (the **"Phase #2 Specific Improvement Assessment Revenue"**) shall be deposited first for the payment of debt service on any bonds issued by the City to finance the Phase #2 Specific Improvement Costs (the **"Future Phase #2 Bonds"**) and second, into an assessment fund that is segregated from all other funds of the City (the **"Phase #2 Specific Improvement Reimbursement Fund"**); and

WHEREAS, the Phase #2 Specific Improvement Assessment Revenue deposited into the Phase #2 Specific Improvement Reimbursement Fund shall be used to reimburse Developer and its assigns for the Phase #2 Specific Improvement Costs advanced in a principal amount plus

interest as to be set forth in the SAP and the Heartland Public Improvement District Phase #2 Reimbursement Agreement (Phase #2 Specific Improvements), attached hereto as Exhibit A and incorporated herein by reference (the **"Reimbursement Agreement"**); and

WHEREAS, at the discretion of the City and in accordance with the Development Agreement, prior to or contemporaneously with the issuance of any Future Phase #2 Bonds, the Developer and City may amend the Reimbursement Agreement and the Development Agreement as determined necessary by City's bond counsel for issuance of any such bonds, for compliance with applicable law and for compliance with the obligations of the parties under the Reimbursement Agreement.

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

SECTION 1. That the recitals set forth in the preamble of this Resolution are true and correct in all material respects.

SECTION 2. That the City Council of the City approves the Reimbursement Agreement by and between the City and the Developer in substantially the form attached hereto as Exhibit A with such changes as may be approved by the City Manager, and the Mayor is hereby authorized to execute such Reimbursement Agreement and the City Secretary may attest such signature.

SECTION 3. That it is hereby found, determined, and declared that a sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Resolution and the subject matter thereof has been discussed, considered, and formally acted upon. The City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

DULY RESOLVED on this the 1st day of November 2021, by a vote of _____ayes and _____ nays at a regular meeting of the City Council of the City of Mesquite, Texas.

Bruce Archer
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED:

David L. Paschall
City Attorney

EXHIBIT A

REIMBURSEMENT AGREEMENT

BETWEEN

THE CITY OF MESQUITE, TEXAS, AND

D.R. HORTON-TEXAS, LTD.

HEARTLAND PUBLIC IMPROVEMENT DISTRICT
PHASE #2 REIMBURSEMENT AGREEMENT
(PHASE #2 SPECIFIC IMPROVEMENTS)

This Heartland Public Improvement District Phase #2 Reimbursement Agreement (Phase #2 Specific Improvements) (this "Reimbursement Agreement") is executed by and between the City of Mesquite, Texas (the "City") and D.R. Horton – Texas, Ltd., a Texas limited partnership, (the "Developer") (individually referred to as a "Party" and collectively as the "Parties") to be effective as of November 1, 2021 (the "Effective Date").

RECITALS

WHEREAS, capitalized terms used in this Reimbursement Agreement shall have the meanings given to them in this Reimbursement Agreement or in the *Heartland Public Improvement District Service and Assessment Plan*, originally dated September 4, 2018, as the same may be amended, supplemented, and updated from time to time (the "SAP"); and

WHEREAS, on December 18, 2017, the City Council passed and approved a resolution creating the Heartland Public Improvement District (the "District") covering approximately 122 acres of land described by metes and bounds in said Resolution (the "District Property"); and

WHEREAS, the purpose of the District is to finance public improvements (the "Authorized Improvements") as provided by Chapter 372, Texas Local Government Code, as amended (the "PID Act") that promote the interests of the City and confer a special benefit on the Assessed Property within the District; and

WHEREAS, the District Property is being developed in accordance with that certain "Heartland Development Agreement," executed by and between the Developer, and the City effective April 2, 2018, as amended (together, the "Development Agreement"); and

WHEREAS, the District Property is being developed in phases, and special assessments for each phase have been or will be levied against the Assessed Property within such phase to pay the costs of Authorized Improvements that confer a special benefit on the Assessed Property within such phase; and

WHEREAS, Phase #2 Specific Improvements (as defined in the SAP) are to be constructed to serve Phase #2 of the District Property, as to be described and depicted in the Service and Assessment Plan; and

WHEREAS, the City Council intends to pass and approve an Ordinance (the "Assessment Ordinance"), which, among other things, will approve an amended SAP (including the amended Phase #2 Assessment Roll), will levy assessments on property within Phase #2 of the District for the Phase #2 Specific Improvements (the "Assessments"), and will establish the dates upon which interest on Assessments will begin to accrue and collection of Assessments will begin; and

WHEREAS, the $4,250,029 is the estimated costs of the Phase #2 Specific Improvements (plus financing costs as to be set forth in the SAP) to be assessed against Phase #2 of the District Property for the costs and financing of the Phase #2 Specific Improvements (the "Phase #2 Specific Improvement Costs"); and

WHEREAS, the SAP shall allocate the Phase #2 Specific Improvement Costs to Phase #2 of the District Property, and the SAP will contemplate the allocation of the Phase #2 Specific Improvement Costs among the single family residential lots to be created from the subdivision of Phase #2 properties within the District; and

WHEREAS, the Assessments will be reflected on the amended Phase #2 Assessment Roll as approved by the City Council; and

WHEREAS, the SAP and the Assessment Ordinance shall provide, in part, that an Assessment or Assessments may be paid in full at any time, and if an Assessment is not paid in full, it shall be due and payable in Annual Installments plus interest for a period of 30 years or until the Assessment is paid in full; and

WHEREAS, all revenue received and collected by the City from the collection of the Assessments and Annual Installments (excluding Delinquent Collection Costs and Administrative Expenses) (the "Phase #2 Specific Improvement Assessment Revenue") shall be deposited first for the payment of debt service on any bonds issued by the City to finance the Phase #2 Specific Improvement Costs (the "Future Phase #2 Bonds") and second, into an assessment fund that is segregated from all other funds of the City (the "Phase #2 Specific Improvement Reimbursement Fund"); and

WHEREAS, the Phase #2 Specific Improvement Assessment Revenue deposited into the Phase #2 Specific Improvement Reimbursement Fund shall be used to reimburse Developer and its assigns for the Phase #2 Specific Improvement Costs advanced in a principal amount plus interest as to be set forth in the SAP; and

WHEREAS, the obligations of the City to use the Assessments hereunder is authorized by the PID Act; and

WHEREAS, at the discretion of the City and in accordance with the Development Agreement, prior to or contemporaneously with the issuance of any Future Phase #2 Bonds, the Developer and City may amend this Agreement and the Development Agreement as determined necessary by City's bond counsel for issuance of any such bonds, for compliance with applicable law and for compliance with the obligations of the parties under this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS OF THE PARTIES SET FORTH IN THIS REIMBURSEMENT AGREEMENT AND FOR VALUABLE CONSIDERATION THE RECEIPT AND

ADEQUACY OF WHICH ARE ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. The recitals in the "WHEREAS" clauses of this Reimbursement Agreement are true and correct, create obligations of the Parties, and are incorporated as part of this Reimbursement Agreement for all purposes.

2. Strictly subject to the terms, conditions, and requirements and solely from the revenues as herein provided and in accordance with the Development Agreement, the City agrees to pay the Developer and the Developer shall be entitled to receive from the City, the amount equal to the actual costs of the Phase #2 Specific Improvements paid by the Developer as to be set forth in the SAP, in accordance with the terms of this Reimbursement Agreement, in a principal amount not to exceed $4,250,029 (the "Reimbursement Amount"), plus interest accrued, as provided in Section 2(a) below. The City hereby covenants to create, concurrently with the execution of this Reimbursement Agreement, a separate fund to be designated the "Phase #2 Specific Improvement Reimbursement Fund." The Reimbursement Amount is payable from Phase #2 Specific Improvement Assessment Revenue to be deposited in the Phase #2 Specific Improvement Reimbursement Fund as described below and in accordance with the Development Agreement:

    a. The Reimbursement Amount is payable solely from: (i) the Phase #2 Specific Improvement Assessment Revenue received and collected by the City and deposited into the Phase #2 Specific Improvement Reimbursement Fund after the payment of debt service on Future Phase #2 Bonds; (ii) the net proceeds (after funding reserve funds, payment of costs of issuance, including the costs paid or incurred by the City and City Administrative Expenses) of one or more series of Future Phase #2 Bonds issued by the City to fund the Reimbursement Amount in accordance with the terms of the Development Agreement and secured by the Phase #2 Specific Improvement Assessment Revenue; or (iii) a combination of items (i) and (ii) immediately above. After the levy thereof pursuant to an Assessment Ordinance, the Phase #2 Specific Improvement Assessment Revenue shall be received, collected and deposited into the Phase #2 Specific Improvement Reimbursement Fund subject to the following limitations:

        i. Calculation of the Assessments and the first Annual Installment for a Lot or Parcel shall begin as provided in the SAP.

        ii. The Assessments collected for the Reimbursement Amount shall accrue simple interest annually at the rates set forth in the SAP, such rates to be in compliance with Subsections 372.023(e)(1) and (e)(2) of the PID Act. Interest shall begin and continue on the unpaid principal amount of the Assessments as to be set forth in the SAP until the earlier of (i) the expiration of the term to be set forth in the SAP, or (ii) the issuance of Future

Phase #2 Bonds to fund the Reimbursement Amount, as reduced by annual payments made pursuant to (iv) below.

iii. Phase #2 Specific Improvement Assessment Revenue dedicated to the payment of the Reimbursement Amount and interest thereon, shall be deposited into the Phase #2 Specific Improvement Reimbursement Fund after the payment of debt service on the all outstanding Future Phase #2 Bonds.

iv. After levy of the Assessments and in accordance with the SAP, the Developer shall receive the Unpaid Balance in annual installments as set forth in the SAP and in Section 3 below from the Phase #2 Specific Improvement Reimbursement Fund, for the time period set forth in the SAP or until Future Phase #2 Bonds are issued, and as allowed under Section 2(a) above.

3. The Reimbursement Amount, plus the interest as described in above, are collectively, the "Unpaid Balance." The Unpaid Balance is secured by and payable solely from Phase #2 Specific Improvement Assessment Revenue when levied, received and collected by the City for such purpose and deposited into the Phase #2 Specific Improvement Reimbursement Fund subject to Section 3(a)(iii), and Section 5 herein. No other City funds, revenue, taxes, or income of any kind shall be used to pay the Unpaid Balance, even if the Unpaid Balance is not paid in full by the term of this Agreement, as set forth herein. Payment of Phase #2 Specific Improvement Assessment Revenue from the Phase #2 Specific Improvement Reimbursement Fund after the payment of debt service on any Future Phase #2 Bonds, shall be made annually to the Developer subject to the term of this Reimbursement Agreement as set forth in Section 21. The outstanding Unpaid Balance and the Reimbursement Amount shall be reduced by the amount of each annual payment to the Developer from the Phase #2 Specific Improvement Reimbursement Fund.

4. This Reimbursement Agreement shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or a debt or other obligation of the City payable from any source other than Phase #2 Specific Improvement Assessment Revenue levied, received, collected and deposited into the Phase #2 Specific Improvement Reimbursement Fund. The City covenants that it will comply with the provisions of this Reimbursement Agreement, the Development Agreement, and the PID Act, including provisions relating to the administration of the District and the enforcement and collection of assessments, and all other covenants provided therein. Notwithstanding its collection efforts, if the City fails to receive all or any part of the Phase #2 Specific Improvement Assessment Revenue or does not receive an amount in excess of the annual debt service due on Future Phase #2 Bonds, and, as a result, is unable to make transfers from the Phase #2 Specific Improvement Assessment Revenue Fund for payments to the Developer as

required under this Reimbursement Agreement, such failure and inability shall not constitute a Failure or Default by the City under this Reimbursement Agreement.

5. If Future Phase #2 Bonds are issued to fund the Reimbursement Amount, the net proceeds of such Future Phase #2 Bonds shall be used to pay the outstanding Reimbursement Amount, as reduced by payments made pursuant to Section 3 herein, due to the Developer under this Reimbursement Agreement for the costs of Phase #2 Specific Improvements as set forth in the SAP. However, no Future Phase #2 Bonds shall be issued unless (i) the funds necessary to complete the Phase #2 Specific Improvements are deposited with the net proceeds of Future Phase #2 Bonds on the closing date of the Future Phase #2 Bonds, or, (ii) the Phase #2 Specific Improvements are already complete and accepted by the City at the time Future Phase #2 Bonds are issued, or (iii) other arrangements satisfactory to the City are made. The Reimbursement Agreement shall terminate on the earlier of (i) the payment of amounts due pursuant to this Agreement, (ii) the issuance of the Future Phase #2 Bonds to fund the Reimbursement Amount as reduced by payments made pursuant to Section 3 herein, (iii) the expiration of the Assessments as set forth in the SAP, or (iv) termination of this Agreement pursuant to an Event of Default herein or under the Development Agreement. Notwithstanding the foregoing, the Developer shall only be entitled to repayment of the costs of the Phase #2 Specific Improvements as set forth in the SAP. If completion of the Phase #2 Specific Improvements is less than the amounts set forth in the SAP, the Developer shall not be entitled to such excess amounts. The Developer represents and warrants that it will not request payment with respect to any Phase #2 Specific Improvement that is not part of the Phase #2 Specific Improvements identified in the SAP and it will follow all procedures set forth in the Development Agreement with respect to certification for payments, including for payments of the Unpaid Balance from the Phase #2 Specific Improvement Reimbursement Fund. It is the City's current intent to issue the Future Phase #2 Bonds to fund the Reimbursement Amount. Notwithstanding, the issuance of such Future Phase #2 Bonds is solely within the discretion of the City.

6. The Developer has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part without the consent of (but with written notice to) the City, the Developer's right, title, or interest in the revenue streams identified in this Reimbursement Agreement including, but not limited to, any right, title, or interest of the Developer in and to payment of the Unpaid Balance (any of the foregoing, a "Transfer," and the person or entity to whom the Transfer is made, a "Transferee"). Notwithstanding the foregoing, however, no Transfer shall be effective until five (5) days after Developer's written notice of the Transfer is received by the City, including for each Transferee the information required by Section 9 below. The City may rely on any notice of a Transfer received from the Developer without obligation to investigate or confirm the validity or occurrence of such Transfer. No conveyance, transfer, assignment, mortgage, pledge or

other encumbrance shall be made by the Developer or any successor or assignee of the Developer that results in the City being an "obligated person" within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission. The Developer waives all rights or claims against the City for any such funds provided to a third party as a result of a Transfer for which the City has received notice. The City shall not be required to make payments pursuant to this Reimbursement Agreement to more than two parties and shall not be required to execute a consent or make any representations as a result of a Transfer.

7. The obligations of the City under this Reimbursement Agreement are non-recourse and payable only from the Phase #2 Specific Improvement Reimbursement Fund and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income, or property. None of the City or any of its elected or appointed officials or any of its officers or employees shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of this Reimbursement Agreement or their acts or omissions under this Reimbursement Agreement.

8. Nothing in this Reimbursement Agreement is intended to constitute a waiver by the City of any remedy the City may otherwise have outside this Reimbursement Agreement against the Developer, any Transferee, or any other person or entity involved in the design, construction or installation of the Phase #2 Specific Improvements. The obligations of Developer hereunder shall be those as a Party hereto and not solely as an owner of property in the District. Nothing herein shall be constructed, nor is intended, to affect the City's or Developer's rights and duties to perform their respective obligations under other agreements, regulations and ordinances.

9. This Reimbursement Agreement is being executed and delivered, and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply to the terms hereof, the substantive laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Reimbursement Agreement. In the event of a dispute involving this Reimbursement Agreement, exclusive venue for such dispute shall lie in any court of competent jurisdiction in Harris County, Texas.

10. Any notice required or contemplated by this Reimbursement Agreement shall be signed by or on behalf of the Party giving the Notice, and shall be deemed effective as follows: (i) when delivered by a national company such as FedEx or UPS with evidence of delivery signed by any person at the delivery address regardless of whether such person was the named addressee; or (ii) 72 hours after the notice was deposited with the United States Postal Service, Certified Mail, Return Receipt Requested. Any Party may change its address by delivering written notice of such change in accordance with this section. All Notices given pursuant to this Section shall be addressed as follows:

To the City:	City Manager 1515 N. Galloway Mesquite, TX 75149
With a copy to:	Attn: City Attorney 1515 N. Galloway Mesquite, TX 75149
To the Developer:	D.R. Horton – Texas, Ltd. Attn: Mr. David Booth 4306 Miller Road Rowlett, Texas 75088
With a copy to:	Timothy G. Green Coats Rose, P.C. 14755 Preston Road, Suite 600 Dallas, Texas 75254

11. Notwithstanding anything herein to the contrary, nothing herein shall otherwise authorize or permit the use by the City of the Assessments contrary to the provisions of the PID Act.

12. Remedies:

    a. If either Party fails to perform an obligation imposed on such Party by this Reimbursement Agreement (a "Failure") and such Failure is not cured after written notice and the expiration of the cure periods provided in this section, then such Failure shall constitute an "Event of Default." Upon the occurrence of a Failure by a non-performing Party, the other Party shall notify the non-performing Party and all Transferees of the non-performing Party in writing specifying in reasonable detail the nature of the Failure. The non-performing Party to whom notice of a Failure is given shall have at least 30 days from receipt of the notice within which to cure the Failure; however, if the Failure cannot reasonably be cured within 30 days and the non-performing Party has diligently pursued a cure within such 30-day period and has provided written notice to the other Party that additional time is needed, then the cure period shall be extended for an additional 30 day period so long as the non-performing Party cures such default within 90 days. Any Transferee shall have the same rights as the Developer to enforce the obligations of the City under this Reimbursement Agreement and shall also have the right, but not the obligation, to cure any alleged Failure by the Developer within the same time periods that are provided to the Developer. The election by a Transferee to cure a Failure by the Developer shall constitute a cure by the Developer.

    b. Notwithstanding the foregoing, the following are Events of Default under this

Agreement:

i. The Developer shall fail to pay to the City any monetary sum hereby required of it as and when the same shall become due and payable and shall not cure such default within thirty (30) days after the later of the date on which written notice thereof is given by the City to the Developer, as provided in this Agreement;

ii. The Developer shall fail to comply in any material respect with any term, provision or covenant of this Agreement (other than the payment of money to the City), and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the Developer;

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

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

v. 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

vi. The failure by Developer or any Affiliate to pay Impositions, and Assessments on property owned by the Developer and/or any Affiliates within the PID, if such failure is not cured within thirty (30) days.

vii. A Developer event of default under the Development Agreement.

viii. The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

c. If the City is in Default, the Developer's sole and exclusive remedies shall be to: (1) seek a writ of mandamus to compel performance by the City; or (2) seek specific enforcement of this Reimbursement Agreement.

d. If the Developer is in Default, the City may pursue any legal or equitable remedy or remedies, including, without limitation, actual 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, actual damages, excluding punitive, special and consequential damages, injunctive relief or other available remedies with respect to

obligations that expressly survive 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.

e. 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.

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

13. The Developer shall assume the defense of, and indemnify and hold harmless the City's inspector, the City employees, officials, officers, representative and agents of the City and each of them (each an "Indemnified Party") from and against, all actions, damages, claims, loses or expense of every type and description to which they may be subject or put, by reason of, or resulting from the breach of any provisions of this Reimbursement Agreement by the Developer, the Developer's nonpayment under contracts between the Developer and its consultants, engineers, advisors, contractors, subcontractors and suppliers in the provision of the Phase #2 Specific Improvements constructed by Developer, or any claims by persons employed by the Developer relating to the construction of such projects. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the willful misconduct or gross negligence of any Indemnified Party. The City does not waive its defenses and immunities, whether governmental, sovereign, official or otherwise and nothing in this Reimbursement Agreement is intended to or shall confer any right or interest in any person not a party hereto.

14. To the extent there is a conflict between this Reimbursement Agreement and an indenture securing the Future Phase #2 Bonds issued to fund the Reimbursement Amount, the indenture securing such Future Phase #2 Bonds shall control as the provisions relate to the Assessments.

15. The failure by a Party to insist upon the strict performance of any provision of this Reimbursement Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Reimbursement Agreement.

16. The City does not waive or surrender any of its governmental powers, immunities, or rights except to the extent permitted by law and necessary to allow the Developer to enforce its remedies under this Reimbursement Agreement.

17. Nothing in this Reimbursement Agreement, express or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Developer and its assigns any rights, remedies, or claims under or by reason of this Reimbursement Agreement, and all covenants, conditions, promises, and agreements in this Reimbursement Agreement shall be for the sole and exclusive benefit of the City and the Developer.

18. The City represents and warrants that this Reimbursement Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Reimbursement Agreement on behalf of the City has been duly authorized to do so. The Developer represents and warrants that this Reimbursement Agreement has been approved by appropriate action of the Developer, and that the individual executing this Reimbursement Agreement on behalf of the Developer has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Reimbursement Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions and to the extent provided by law.

19. This Reimbursement Agreement represents the entire agreement of the Parties and no other agreement, statement or promise made by any Party or any employee, officer or agent of any Party with respect to any matters covered hereby that is not in writing and signed by all the Parties to this Agreement shall be binding. This Reimbursement Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Reimbursement Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Reimbursement Agreement; and (b) the remainder of this Reimbursement Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

20. This Reimbursement Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

21. The term of this Reimbursement Agreement is the earlier of (i) the expiration of the Assessments as set forth in the SAP, (ii) until the Unpaid Balance is paid in full in accordance herewith, (iii) the issuance of Future Phase #2 Bonds to fund the Reimbursement Amount, as reduced by payments made pursuant to Section 3 herein, or (iv) termination pursuant to an Event of Default under this Agreement or under the Development Agreement, whichever occurs first. If the Developer defaults under this

Reimbursement Agreement or the Development Agreement, the Development Agreement shall not terminate with respect to the costs of the Phase #2 Specific Improvements that have been previously been approved by the City pursuant to a Certification for Payment (as defined in the Development Agreement) prior to the date of default.

22. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Reimbursement Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to Force Majeure, to perform its obligations under this Reimbursement Agreement, then the obligations affected by the Force Majeure shall be temporarily suspended. Within fifteen (15) business days after the occurrence of a Force Majeure, the Party claiming the right to temporarily suspend its performance, shall give Notice to all the Parties, including a detailed explanation of the Force Majeure and a description of the action that will be taken to remedy the Force Majeure and resume full performance at the earliest possible time. For purposes of this Reimbursement Agreement, "Force Majeure" means any act that (i) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Reimbursement 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; (f) epidemics or pandemics that result in a governmental action that stops or delays construction or halts, impedes or delays the operations of the City; and (g) actions or omissions of a governmental authority (including the actions of the City in its capacity as a governmental authority) that were not caused by, voluntarily induced or promoted by the affected Party (including the submission of incomplete or erroneous information to the City), or brought about by the breach of its obligations under this Reimbursement 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) changes in market condition; (v) 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; or (w) the occurrence of any manpower, material or equipment shortages.

23. Any amounts or remedies due pursuant to this Reimbursement Agreement are not subject to acceleration.

24. 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

Reimbursement Agreement is a contract for goods or services, will not boycott Israel during the term of this Reimbursement 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 Developer and exists to make a profit.

25. The Developer hereby 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 Developer and exists to make a profit.

26. The Developer agrees to either (i) file a Texas Ethics Commission Disclosure of Interested Parties form to the City or (ii) represent in writing that it is exempt from filing of such form, no later than the date upon which the City Council approves this Reimbursement Agreement.

27. By submission of a bid for the Bonds, the bidder represents and verifies that to the extent a bid for the Bonds constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended, neither the bidder nor any syndicate member listed on the Official Bid Form, nor the parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, of the bidder or any syndicate member listed on the Official Bid Form boycott energy companies and, such entities will not boycott energy companies through the end of the underwriting period. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy

companies" shall have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. The bidder and any syndicate member listed on the Official Bid Form understand "affiliate" to mean an entity that controls, is controlled by, or is under common control with the bidder or syndicate member listed on the Official Bid Form, as applicable, and exists to make a profit.

28. By submission of a bid for the Bonds, the bidder represents and verifies that to the extent a bid for the Bonds constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, "SB 19"), as amended, the neither bidder nor any syndicate member listed on the Official Bid Form, nor the parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, of the bidder or any syndicate member listed on the Official Bid Form.

(1) have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and

(2) such entities will not through the end of the underwriting period discriminate against a firearm entity or firearm trade association.

The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19). The bidder and any syndicate member listed on the Official Bid Form understand "affiliate" to mean an entity that controls, is controlled by, or is under common control with the bidder or syndicate member listed on the Official Bid Form, as applicable, and exists to make a profit.

[SIGNATURE PAGES TO FOLLOW]

Executed by Developer and City to be effective on the Effective Date.

ATTEST:

CITY OF MESQUITE

City Secretary

Mayor

APPROVED AS TO FORM

City Attorney

D.R. HORTON – TEXAS, LTD., a Texas limited partnership

By: D.R. HORTON, INC.,
a Delaware corporation, its Authorized Agent

By: _____
Name: David L Booth
Its: Asst VP