

MERCER CROSSING PUBLIC IMPROVEMENT DISTRICT REIMBURSEMENT AGREEMENT

This Mercer Crossing Public Improvement District Reimbursement Agreement (this “Reimbursement Agreement”) is executed between the City of Farmers Branch, Texas (the “City”) and CADG Mercer Crossing Holdings, LLC, a Texas limited liability company (the “Developer”) (individually referred to as a “Party” and collectively as the “Parties”) to be effective March 1, 2017 (the “Effective Date”).

RECITALS

WHEREAS, the Parties have entered into that certain Master Development Agreement dated as of March 1, 2017 (the “Development Agreement”) for the construction of certain public improvements and private improvements within the Mercer Crossing Development within the City; and

WHEREAS, on February 14, 2017 the City Council passed and approved Resolution No. 2017-028 authorizing the creation of the Mercer Crossing Public Improvement District (the “District”) covering approximately 397.57 acres of land described by metes and bounds in said Resolution (the “District Property”), such land being within the Mercer Crossing Development; and

WHEREAS, the purpose of the District is to finance public improvements (the “Public 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, on March 7, 2017, the City Council passed and approved Ordinance No. 3432 (the “Assessment Ordinance”) which, among other things, approved the Mercer Crossing Public Improvement District Service and Assessment Plan and Assessment Roll (the “SAP”) which identified the amount of the assessments on the District Property, and established the dates upon which interest on assessments will begin to accrue and collection of assessments will begin; and

WHEREAS, in addition to approving the SAP, the Assessment Ordinance levied assessments against certain parcels within the District Property (the “Assessed Property”) for the Public Improvements in accordance with the SAP; and

WHEREAS, on November 1, 2016, the City passed and approved Ordinance No. 3400 (the “Zone Ordinance”), creating Reinvestment Zone Number Three, City of Farmers Branch (the “Zone”) for the purpose of paying the costs of the Public Improvements; and

WHEREAS, in addition to creating the Zone, the Zone Ordinance approved a Preliminary Reinvestment Zone Project Plan and Finance Plan for the Zone (the “Plan”) which identified the

amount of tax increment (the “Tax Increment” as set forth in the Zone Ordinance and the Plan) to be collected by the Zone and dedicated to the payment of the Public Improvements; and

WHEREAS, pursuant to the Zone Ordinance, and an agreement between the Zone and the City, the Tax Increment collected each year shall be deposited into the Tax Increment Fund (as defined in the Zone Ordinance) and a portion of the Tax Increment in an aggregate amount not to exceed \$57,762,742 (including interest), over the life of the Zone, shall be transferred annually to an assessment fund created pursuant to Chapter 372, TEXAS LOCAL GOVERNMENT CODE (the “Assessment Fund”), such fund to be segregated from all other Funds of the City; and

WHEREAS, the City shall reduce in each year the Annual Installments of the Assessments in an amount equal to the tax increment revenues dedicated to the Public Improvements in the Plan and transferred to the Assessment Fund each year (the “Zone Revenues”); and

WHEREAS, the City shall use Zone Revenues to offset the Assessment applicable to each Parcel (the “Zone Annual Credit Amount”); and

WHEREAS, the Annual Installment due for each Parcel shall be calculated by taking into consideration any Zone Annual Credit Amount applicable to the Parcel then on deposit in the Assessment Fund; and

WHEREAS, the SAP established \$43,247,845.00 plus interest as the rate set forth in the SAP, as the cost of the Public Improvements to be assessed against the Assessed Property (the “Public Improvements Costs”); and

WHEREAS, the SAP allocated the Public Improvements Costs to the Assessed Property, and the SAP contemplated the allocation of the Public Improvements Costs proportionally based on the Equivalent Units calculated for each Land Use Class anticipated to be built on each Parcel once the District Property is developed; and

WHEREAS, assessments against the Assessed Property (the “Assessments”) are reflected in the SAP as approved by the City Council and updated annually; and

WHEREAS, the SAP and the Assessment Ordinance provide, in part, that an Assessment or Assessments may be paid in full, 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 “Assessment Revenue”) shall be deposited as required by the PID Act into the Assessment Fund; and

WHEREAS, the Assessment Revenue and Zone Revenues deposited into the Assessment Fund shall be used to reimburse Developer for Public Improvements Costs in an amount not to exceed \$43,247,845.00, plus interest at the rate set forth in the SAP; and

WHEREAS, the obligations of the City to use the Zone Revenues herewith is authorized by the Zone Act; and

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

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS OF THE PARTIES SET FORTH IN THIS AGREEMENT AND FOR VALUABLE CONSIDERATION THE RECEIPT AND ADEQUACY OF WHICH ARE ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Capitalized terms used in this Reimbursement Agreement shall have the meanings given to them in this Reimbursement Agreement, the Development Agreement or in the SAP, as the same may be amended from time to time.
2. 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.
3. Strictly subject to the terms, conditions, and requirements of this Agreement and the SAP and solely from (i) Assessment Revenue and Zone Revenues on deposit in the Assessment Account of the Assessment Fund (as described in 4. Below), the City agrees to reimburse the Developer, and the Developer shall be entitled to receive from the City, the amount equal to the actual costs of the Public Improvements as set forth in the SAP, as paid by the Developer, plus interest (as set forth in the Service and Assessment Plan), on the unpaid balance in accordance with the terms of this Reimbursement Agreement, until the expiration of the Assessments under the SAP or the reimbursement or payment of an amount not to exceed \$43,247,845.00 plus interest accrued at the rate set forth in the SAP (“Reimbursement Amount”). Such payment of Assessment Revenues and Zone Revenues from the Assessment Account of the Assessment Fund shall be made semi-annually by the City for those Public Improvements (or portions or segments thereof) that have been approved for payment by the City pursuant to a Certification for Payment (as set forth in the Development Agreement). No payments shall be made pursuant to this Agreement for costs of Public Improvements (or portions or segments thereof) that have not been approved by the City for payment pursuant to a Certification for Payment. The Developer may submit a Certification for Payment on a monthly basis; however, payment made pursuant to this Agreement shall be on a semi-annual basis.
4. The City hereby covenants to create, concurrently with the execution of this Agreement, the following funds and accounts:
 - (a) The Assessment Fund
 - (i) Assessment Account
 - (ii) The Administrative Expense Account

The City shall deposit Assessment Revenue (including assessment payments representing prepayments of Assessments) and Zone Revenues to the Assessment Account of the Assessment Fund and shall deposit Delinquent Collection Costs and Administrative Expense collections to the Administrative Expense Account of the Assessment Fund. The Reimbursement Amount is payable from monies to be deposited in the Assessment Account of the Assessment Fund as described below.

- (b) The Reimbursement Amount is payable from the Assessment Revenue and Zone Revenues received and collected by the City and deposited into the Assessment Account of the Assessment Fund. Assessment Revenue shall be received, collected and deposited into the Assessment Account of the Assessment Fund subject to the following limitations:
 - (i) Calculation of the Assessments and the first Annual Installment shall be as set forth in the SAP.
 - (ii) The Assessments shall accrue interest at the rates set forth in and in accordance with the SAP. Interest shall continue on the unpaid principal amount of the Assessment for a parcel for 30 years or until the Assessments are paid in full.
 - (iii) The Developer shall be reimbursed in a combined aggregate amount not to exceed \$43,247,845.00, plus interest as set forth in the SAP, from the Assessment Account of the Assessment Fund.
 - (iv) The unpaid Reimbursement Amount shall bear simple interest per annum at the rate specified in the SAP.
- (c) In connection with payment of the Reimbursement Amount from the Assessment Account of the Assessment Fund, the following shall be applicable:
 - (i) Each year, the City shall reduce the Annual Installments collected from Assessed Parcels, by the amounts deposited to the Assessment Account of the Assessment Fund by the City from the Tax Increment Fund pursuant to the SAP, Zone Ordinance, the Plan and an agreement between the Zone and the City.
 - (ii) The City shall use the Zone Revenues generated from each Parcel to offset a portion of such Parcel's Assessment (the "Zone Annual Credit Amount"). The Annual Installment for each Parcel shall be calculated by taking into consideration any Zone Annual Credit Amount applicable to such Parcel then on deposit in the Assessment Account of the Assessment Fund in accordance with the SAP. The Zone Revenues attributable to each Parcel of Assessed Property collected in any given year shall be used to calculate each Parcel's Zone Annual Credit Amount for such Parcel in the following year as set forth in the SAP.

- (d) The City may invest all funds in the Assessment Fund at its discretion in investments authorized by Chapter 2256, Texas Government Code, as amended. All earnings of the Assessment Fund shall inure to the benefit of the City and may be used for any lawful purpose.
5. The Reimbursement Amount, plus interest as described in the SAP (collectively, the “Unpaid Balance”), are secured by and payable solely from the Assessment Revenue and Zone Revenues received and collected by the City and deposited into the Assessment Account of the Assessment Fund. No other City funds, revenue, taxes, or income of any kind shall be used to pay the Unpaid Balance. 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 Assessment Revenue received, collected and deposited into the Assessment Account of the Assessment Fund. The City will use all reasonable efforts to receive and collect the Assessment Revenues and the Zone Revenues concurrently with the collection of City ad valorem taxes (including the foreclosure of liens resulting from the nonpayment of the Assessments or Annual Installments or other charges due and owing under the SAP), and upon receipt and collection, immediately deposit the same into the Assessment Account of the Assessment Fund. The City further covenants that it will comply with the provisions of this Agreement, the PID Act, and the Zone Act, including provisions relating to the administration of the District and the Zone and the enforcement and collection of taxes and assessments, and all other covenants provided therein. If bonds or other obligations are issued by an entity other than the City that are secured or that are to be paid, in whole or in part, by the Reimbursement Amount for the Public Improvements, pursuant to an assignment by Developer, and provided that the Public Improvements Project Costs associated with the payments have been approved by the City pursuant to a Certification for Payment, all amounts in the Assessment Account of the Assessment Fund corresponding to reimbursement amounts approved by the City shall be deposited semi-annually no later than February 15 and August 15 of each year with the bond trustee(s) for such bonds, provided that the City has been provided accurate wiring information with respect to such transfer. In the event of the issuance of bonds pursuant to an assignment as described in this Section 5, the City’s obligation to annually provide all amounts in the Assessment Account of the Assessment Fund to the bond trustee as described in this Section 5 are unconditional and absolute, and specifically are not conditioned upon the requirements of the Development Agreement except for the requirement that the Public Improvement Project Costs must have been approved by the City pursuant to a Certificate for Payment. The City shall make no payments pursuant to this Agreement for Public Improvements Project Costs that have not been approved by the City pursuant to a Certificate for Payment. Upon the issuance of bonds as described above, in no event shall disbursements be made to the Developer pursuant to this Agreement or the Development Agreement, and this Section 5 will control as to the disbursement of any funds from the Assessment Account of the Assessment Fund as defined herein (or as defined in the Development Agreement).
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 prior written notice to) the

City, the Developer's right, title, or interest under this Reimbursement Agreement including, but not limited to, any right, title, or interest of the Developer in and to payment of the Unpaid Balance to the Public Finance Authority of Wisconsin, a unit of government and body corporate and politic of the State of Wisconsin (the "PFA"). Notwithstanding the foregoing, however, this Transfer shall not be effective until five days after notice of the Transfer is received by the City, including for the PFA, the information required by Section 10 below and including wiring information for transfer of the reimbursement payments to the PFA or its bond trustee. The City Manager is hereby authorized to execute that certain consent letter (in a form approved by the City Manager), addressed to the PFA; and the City gives its consent and approval to the issuance of bonds by the PFA pursuant to Section 66.0304(11)(a) of the Wisconsin Statutes for the purpose of paying the costs of and completion of the Project for the benefit of the City.

7. The obligations of the City under this Reimbursement Agreement are non-recourse and payable only from the Assessment Account of the Assessment 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 any person or entity involved in the design, construction or installation of the Public Improvements.
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, venue for such dispute shall lie in any court of competent jurisdiction in Dallas 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: Attn: Charles Cox, City Manager
City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to: Attn: Peter G. Smith, City Attorney
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

To the Developer: Attn: Mehrdad Moayed
CADG Mercer Crossing Holdings, LLC
1800 Valley View Lane, Suite 300
Farmers Branch, Texas 75234

With a copy to: Attn: J. Prabha Cinclair
Miklos Law, PLLC
1800 Valley View Lane, Suite 360
Farmers Branch, Texas 75234
E-mail: cinclair@mikloslegal.com

11. Notwithstanding anything herein to the contrary, nothing herein shall otherwise authorize or permit the use by the City of the Zone Revenues or Assessment Revenues contrary to the provisions of the Zone Act or the PID Act, respectively.
12. Remedies:
 - (a) If either Party fails to perform an obligation imposed on such Party by this Reimbursement Agreement or fails to comply in any material respect with any term, provision or covenant of this 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 a “Default.” Upon the occurrence of a Failure by a non-performing Party, the other Party shall notify the non-performing Party and the PFA 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 period in excess of the 30 days but not to exceed an additional 90 days, so long as the non-performing Party is diligently pursuing a cure. Upon assignment the PFA 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 the PFA to cure a Failure by the Developer shall constitute a cure by the Developer but shall not obligate the PFA to be bound by this Reimbursement Agreement with respect to Developer obligations under this Reimbursement Agreement unless the PFA agrees to be bound.

- (b) If the Developer is in Default, the City's sole and exclusive remedy shall be to seek specific enforcement of this Reimbursement Agreement. No Default by the Developer, however, shall: (1) affect the obligations of the City to use the amounts transferred to the Assessment Account of the Assessment Fund as provided in Sections 4 and 5 of this Reimbursement Agreement; or (2) entitle the City to terminate this Reimbursement Agreement. Provided, however, that notwithstanding (1) and (2) herein, prior to approval by the City of the costs of the Public Improvement (or portions or segments thereof) pursuant to a Certification for Payment, if the Developer defaults under This Reimbursement Agreement or the Development Agreement or the Development Agreement terminates according to its terms, this Reimbursement Agreement shall also terminate with respect to those Public Improvements Project Costs that have not been approved by the City pursuant to a Certificate for Payment. In the event of such default this Reimbursement Agreement shall not terminate with respect to those Public Improvement Costs that have been approved by the City pursuant to a Certificate for Payment prior to the date of default.
 - (c) If the City is in Default, the Developer's sole and exclusive remedy shall be to seek specific performance of this Reimbursement Agreement. In no event shall any Party have any liability under this Reimbursement Agreement for any exemplary or consequential damages.
- 13. In the event of any conflict between this Reimbursement Agreement and any other agreement between the City and the Developer directly or indirectly related to the amounts transferred to the Assessment Account of the Assessment Fund or the Tax Increment Fund, the Parties intend that the Plan and the SAP shall control.
 - 14. 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.
 - 15. 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.
 - 16. 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.

17. The City represents and warrants that this 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 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.
18. This Reimbursement Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Reimbursement Agreement. 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; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) 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.
19. This Reimbursement Agreement may be executed in any number of counterparts, each of which shall be deemed an original.
20. Each Party shall use 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 (as defined in the Development Agreement), to perform its obligations under this Reimbursement Agreement, then the obligations affected by the Force Majeure shall be temporarily suspended. Within three (3) 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; provided, however, that the City shall only transfer revenues on deposit in the Assessment Account of the Assessment Fund as and if funds are available in the Assessment Account of the Assessment Fund.
21. This Agreement shall terminate on the earlier to occur of (i) final payment of the Reimbursement Amount, (ii) the expiration of the term of the outstanding Assessments under the SAP, or (iii) the occurrence of an Event of Default or termination event under the Development Agreement as set forth in Section 12(b).

22. Notwithstanding anything to the contrary herein, the City and 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 Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE.
- (a) Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:
- (i) the total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Agreement;
 - (ii) the recovery of damages against City may not include consequential damages or exemplary damages;
 - (iii) the Parties may not recover attorney's fees; and
 - (iv) the Parties are not entitled to specific performance or injunctive relief against the City.
23. In no event shall any Party have any liability under this Agreement for any exemplary or consequential damages.
24. Forbearance by the non-defaulting Party to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default by the other Party shall not be deemed or construed to constitute a waiver of such default. One or more waivers of a breach of any covenant, term or condition of this Agreement by either Party hereto shall not be construed by the other Party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either Party to or of any act by the other Party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any other subsequent similar act.

[SIGNATURE PAGES TO FOLLOW]

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

ATTEST:

CITY OF FARMERS BRANCH, TEXAS

Name: Amy Piukana

Title: City Secretary

By: _____

Name: Bob Phelps

Title: Mayor

Date: _____

APPROVED AS TO FORM

Name: Peter G. Smith

Title: Attorney for the City

DEVELOPER:

CADG Mercer Crossing Holdings, LLC,
a Texas limited liability company

By: CADG Holdings, LLC,
a Texas limited liability company
Its Sole Managing Member

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