

**Resolution No. \_\_\_\_\_**

**A resolution authorizing the execution of the Amended and Restated Chapter 380 Program Agreement for Economic Development Incentives by and among D.R. Horton, Inc., D.R. Horton Materials, Inc., and the City of Arlington, Texas, relative to the development of and the relocation of D.R. Horton, Inc.'s corporate headquarters and its purchasing entity, D.R. Horton Materials, Inc., to 1361 Wet-N-Wild Way in Arlington, Texas**

WHEREAS, on August 4, 2015, City Council approved Resolution No. 15-155, authorizing the execution of a Chapter 380 Program Agreement for Economic Development Incentives (the "Original Agreement") by and between D.R. Horton, Inc. and the City of Arlington, Texas (the "City") relative to the development of 1361 Wet-N-Wild Way in Arlington, Texas (the "Arlington location") as D.R. Horton, Inc.'s corporate headquarters (the "Project"); and

WHEREAS D.R. Horton, Inc. has completed the development of the Project and relocation of its corporate headquarters; and

WHEREAS, D.R. Horton, Inc. desires to increase the business operations occurring at the Arlington location through the relocation of its purchasing entity, D.R. Horton Materials, Inc., to the Arlington location; and

WHEREAS, the City, D.R. Horton, Inc. and D.R. Horton Materials, Inc. now want to amend the Original Agreement; NOW THEREFORE;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute the Amended and Restated Chapter 380 Program Agreement for Economic Development Incentives (the "Amended and Restated Agreement") with D.R. Horton, Inc. and D.R. Horton Materials, Inc.

III.

A substantial copy of the Amended and Restated Agreement is attached hereto and incorporated herein for all purposes.

PRESENTED AND PASSED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays at a regular meeting of the City Council of the City of Arlington, Texas.

\_\_\_\_\_  
W. JEFF WILLIAMS, Mayor

ATTEST:

\_\_\_\_\_  
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY  \_\_\_\_\_

THE STATE OF TEXAS     §     AMENDED AND RESTATED  
  §     CHAPTER 380 PROGRAM AGREEMENT  
  §     FOR ECONOMIC DEVELOPMENT  
COUNTY OF TARRANT   §     INCENTIVES

THIS AMENDED AND RESTATED CHAPTER 380 PROGRAM AGREEMENT FOR ECONOMIC DEVELOPMENT INCENTIVES (this “Agreement”) is executed by and among **D.R. HORTON, INC.**, an entity authorized to do business in Texas (hereafter referred to as “OWNER”), its address being 1341 Horton Circle, Arlington, Texas 76011, **D.R. HORTON MATERIALS, INC.**, an entity authorized to do business in Texas (hereafter referred to as “RETAILER”), its address being 1341 Horton Circle, Arlington, Texas 76011, and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as “CITY”).

W I T N E S S E T H:

- WHEREAS, unless otherwise defined, capitalized terms have the meaning assigned in Section I; and
- WHEREAS, OWNER has completed the Project and the relocation of its corporate headquarters; and
- WHEREAS, OWNER desires to increase the business operations occurring at the Premises by consolidating its purchasing offices into a single location through the relocation of RETAILER to Arlington; and
- WHEREAS, OWNER’s consolidation of its purchasing offices into a single location through the relocation of RETAILER to Arlington will result in additional sales tax revenue for the CITY; and
- WHEREAS, OWNER, CITY, and RETAILER desire to amend and restate the Chapter 380 Program Agreement for Economic Development Incentives (the “Original Agreement”) to include additional grant program as an incentive for RETAILER’s relocation to Arlington; and
- WHEREAS, CITY has found that providing a program consisting of grant payments and other incentives to OWNER and RETAILER in exchange for OWNER’S completion of the Project and RETAILER’s relocation to the Project will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as “PROGRAM”); and
- WHEREAS, 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 the public purpose is accomplished;  
and

WHEREAS, Chapter 380 of the Texas Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; NOW THEREFORE,

The CITY, OWNER, and RETAILER for and in consideration of the mutual covenants and promises contained herein do hereby agree, covenant, and contract as set forth below:

**I.**  
**Definitions**

- A. “Development Fees” is defined as all fees due by OWNER to the City of Arlington for the Project, including, but not limited to, plan review fees, building permit and inspection fees, park fees, irrigation review and inspection fees, early grading permit fees, landscape plan review fees, public utilities inspection fees, fire alarm permit and inspection fees, sprinkler system permit and inspection fees, fire pump permit and inspection fees, certificate of occupancy fees, water and sewer tap fees, water activation fees, meter and detector check fees, water and sewer impact fees, and roadway impact fees.
- B. “Development Period” is defined as the time period commencing when OWNER submits construction plans for the Project to the City of Arlington and ending when OWNER is issued a final certificate of occupancy for the completed Project.
- C. “Grant(s)” is defined as the economic development grants paid to RETAILER from lawfully available funds on a monthly basis as set forth in Section V.F.
- D. “Grant Period” shall mean a full calendar month.
- E. “Job” is defined as a permanent, full-time employment position that results in actual employment on the Premises of at least 1,820 hours per position in a year. It shall not include part-time employment.
- F. “Original Term” is defined in Section II hereof.
- G. “Original Incentive” is defined in Section V.A. hereof.
- H. “Premises” are defined as the real property located at 1341 Horton Circle, Arlington, Texas 76011 as described in **Exhibit “A.”**
- I. “Project” is defined as OWNER’S construction of a new corporate headquarters campus consisting of approximately 150,000 square feet of office space and

approximately 500 parking spaces, 450 of which will be located in a structured parking facility located on the Premises.

- J. “Sales and Use Tax” shall mean the one percent (1%) sales and use tax imposed by the CITY pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items by the RETAILER consummated at the Premises.
- K. “Sales Tax Certificate” shall mean the certificate or other statement in a form reasonably acceptable to CITY setting forth the RETAILER’s collection of Sales and Use Tax received by the CITY from the State of Texas for the sale of Taxable Items by the RETAILER at the Premises consummated in the CITY for the applicable Grant Period which are to be used to determine RETAILER’s eligibility for a Grant, together with such supporting documentation required herein, and as CITY may reasonably request.
- L. “Sales Tax Receipts” shall mean the CITY’s receipts from the State of Texas from the collection of Sales and Use Tax by the RETAILER as a result of the sale of Taxable Items by RETAILER at the Premises consummated in the CITY.
- M. “State of Texas” shall mean the office of the Texas Comptroller, or its successor.
- N. “Taxable Items” shall have the meaning assigned to such term by Section 151.010 of the Texas Tax Code.

## **II.** **Term**

The initial term of this Agreement shall begin as of the date of execution by all parties (the “Effective Date”) and continue until the twentieth (20th) anniversary of the Effective Date. Thereafter, the term of this Agreement shall automatically renew for two (2) successive terms of ten (10) years each unless any party gives written notice to the other parties at least ninety (90) days prior to the expiration of the then current term. The Original Term is eighteen (18) years from August 6, 2015.

## **III.** **General Provisions**

- A. The Premises are not in an improvement project financed by tax increment bonds.
- B. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of CITY.

**IV.**  
**Project Conditions**

OWNER shall satisfy the following payment conditions as a condition to receiving payments of all incentives payable to OWNER from the CITY as described in Section V, to avoid termination of this Agreement as to OWNER pursuant to Section VII, and to avoid repayment penalties under Section VIII for breaches of Sections IV. B., C., E., F., I. or J.:

- A. OWNER shall submit an administratively complete application for a building permit to the CITY for construction of the Project no later than August 1, 2016; provided that such date may be extended upon mutual written agreement of both parties.
- B. OWNER shall complete the Project and submit an administratively complete application for a certificate of occupancy no later than December 31, 2017; provided that such date may be extended (1) upon written agreement of both parties; or (2) by OWNER for a maximum of six months if the extension is the result of construction delays. Such deadline, including any authorized extensions thereto, shall be referred to herein as the "C.O. Deadline."
- C. OWNER shall make a capital investment in the Project (including land, building, and parking costs) which the CITY estimates will exceed Twenty Million Dollars (\$20,000,000).

RETAILER shall satisfy the following performance condition as a condition to receiving payment of the Grants as described in Section V.F., and to avoid termination of this Agreement as to RETAILER pursuant to Section VII of this Agreement:

- D. RETAILER shall (1) relocate its purchasing offices into a single location at the Premises no later than June 1, 2019; and (2) maintain the consolidated purchasing office at the Premises continuously throughout the term of this Agreement in a manner that the sale of Taxable Items by RETAILER at the Premises are consummated in the CITY generating Sales and Use Tax for the CITY.

OWNER shall satisfy the following performance conditions to avoid termination of this Agreement pursuant to Section VII and to avoid repayment penalties under Section VIII of this Agreement for breaches of Sections IV. B., C., E., F., I., or J.:

- E. OWNER shall relocate the corporate headquarters for D.R. Horton, Inc. to the completed Project no later than six months after the C.O. Deadline, and maintain the completed Project as the corporate headquarters for D.R. Horton, Inc. for the term of this Agreement; provided that the commencement date of such relocation may be extended upon written agreement of both parties.
- F. OWNER shall provide and fill at least 350 Jobs at the completed Project no later than six (6) months after the C.O. Deadline. OWNER shall provide a notarized

certificate evidencing the number of Jobs at the completed Project no later than seven (7) months after the C.O. Deadline.

- G. OWNER shall conduct the annual shareholder meeting every calendar year in the City of Arlington, starting in the calendar year following relocation of the corporate headquarters to the completed Project, during the Original Term.
- H. OWNER shall conduct vendor meetings and events, and other corporate activity related events, in the City of Arlington no less frequently than four (4) per calendar year, starting in the calendar year following relocation of the corporate headquarters to the completed Project, during the Original Term.
- I. OWNER shall not fail to render for taxation any business personal property owned by OWNER and located within the City of Arlington.
- J. OWNER shall not allow the ad valorem taxes owed to CITY on any property owned by OWNER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.
- K. OWNER and RETAILER covenant and certify that OWNER and RETAILER do not and will not knowingly employ an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if OWNER or RETAILER is convicted of a violation under 8 U.S.D. Section 1324a(f), OWNER or RETAILER, respectively, shall repay to the CITY the full amount of the incentives provided under Section V of this Agreement, plus ten percent (10%) per annum from the date the incentive payment(s) was made. Repayment shall be paid within 120 days after the date OWNER or RETAILER receives notice of violation from the CITY (i.e., a notice of conviction).

## V.

### Incentives

- A. In exchange for OWNER's satisfaction of the payment conditions set forth in Sections IV. A., B., and C. above, CITY agrees to pay to OWNER three (3) grant payments totaling Five Million Five Hundred Thousand Dollars (\$5,500,000) paid out in equal payments as follows:
  - 1. First Payment — An amount not to exceed One Million Eight Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$1,833,333.33) paid to OWNER 30 days after OWNER submits proof to CITY that OWNER has secured a building permit for the Project.

2. Second Payment — An amount not to exceed One Million Eight Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$1,833,333.33) paid to OWNER 30 days after OWNER submits proof to CITY that OWNER has received a certificate of occupancy for the Project.
  3. Third Payment — An amount not to exceed One Million Eight Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$1,833,333.33) paid to OWNER 30 days after the first anniversary of OWNER receiving a certificate of occupancy for the Project.
  4. The incentives described in Sections V.A. (1), (2), and (3) are, collectively, the “Original Incentives.”
- B. OWNER shall apply for and receive all required permits and other licenses and certificates required by the CITY for construction of the Project. During the Development Period, the CITY shall waive all Development Fees. In regards to waived roadway impact fees and water and sewer impact fees, pursuant to Section 1.19(c) of the Impact Fee Chapter in the Arlington Code of Ordinances in effect on August 6, 2015, the CITY will cause an appropriation of CITY funds, in the amount of the impact fees due by OWNER, to the account for the services area in which the Project is located. The CITY will also work with OWNER to establish a procedure by which the CITY can expedite all CITY development approvals, including permits and inspections for the Project. At a minimum, the CITY agrees to act on an administratively complete building permit application within 45 days after the application is filed with the CITY, and the CITY agrees to issue a certificate of occupancy within ten (10) days after receipt of a request for a final inspection if the Project fully complies with applicable requirements for the issuance of a certificate of occupancy. Delays resulting from the CITY’s wrongful act or failure to act will extend the schedule and OWNER’s performance obligations a like amount of days. In addition, the CITY will provide a dedicated staff member to assist with real-time plan review and inspection.
- C. The Original Incentives shall total Five Million Five Hundred Thousand Dollars (\$5,500,000) provided, however, that such amount shall be reduced by the amount of Development Fees waived during the Development Period under Section V.B. such that each payment may be less than One Million Eight Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$1,833,333.33).
- D. Under no circumstances shall the total amount of the Original Incentives and the Development Fee waivers provided for in Section V.B., exceed Five Million Five Hundred Thousand Dollars (\$5,500,000).
- E. As of the Effective Date, the CITY has assigned Five Million Five Hundred Thousand Dollars (\$5,500,000) in the City of Arlington General Fund for the sole



purpose of performing the CITY's obligation to fund the Original Incentives, which funds are held in the Innovation Venture Capital Fund for that purpose. Notwithstanding the foregoing, the payment to OWNER of any incentives is subject to the OWNER's satisfaction of the payment conditions set forth in Sections IV. A., B., and C. above, and the payment schedule provided for in Section V.A.

- F. In exchange for OWNER's satisfaction of the payment conditions set forth in Sections IV. A., B., and C. above, and RETAILER's satisfaction of the performance condition set forth in Section IV.D. above, CITY agrees to provide RETAILER with grants from Sales Tax Receipts or other lawfully available funds, payable as provided herein, in an amount equal to eighty seven point five percent (87.5%) of the Sales Tax Receipts (the "Grant(s)"). Should RETAILER's sales of Taxable Items for a calendar year be less than Fifty Million (\$50,000,000) (the "Threshold Amount") for two (2) consecutive calendar years, the Grants shall be reduced to an amount equal to seventy percent (70%) of the Sales Tax Receipts until such time as a full calendar year of RETAILER's sales of Taxable Items exceeds the Threshold Amount. Should the first Grant paid to RETAILER not be for a Grant Period beginning January 1st then the Threshold Amount for the initial calendar year shall be reduced on a pro rata basis according to the number of months remaining in the initial calendar year.
1. The Grants shall be paid within thirty (30) days after the later to occur of: (i) CITY's receipt of the Sales Tax Certificate submitted by RETAILER for the Grant Period and (ii) the CITY receipt of the Sales Tax Receipts for the Grant Period covered by the Sales Tax Certificate.
  2. The CITY shall not be required to pay any Grant until such time as the CITY has received Sales Tax Receipts from the State for the Grant Period for which such Grant payment is due. Under no circumstances shall CITY obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The CITY shall have an obligation to pay the Grant only to the extent the Sales Tax Receipts are collected from RETAILER. None of the CITY's obligations under this Agreement shall be pledged or otherwise encumbered to secure any debt issuance or in favor of any commercial lender and/or similar financial institution. The Grant made hereunder shall be paid solely from Sales Tax Receipts or other lawfully available funds.
  3. Under no circumstances shall any Grant be calculated to include any receipts from the CITY's imposition and collection of Sales and Use Tax for the sale of Taxable Items at any location, business, establishment, or entity, consummated in the CITY other than from the sales of Taxable Items by RETAILER at the Premises. Any Grant payable hereunder is limited to the extent that the CITY has received Sales Tax Receipts for the respective Grant Period.

4. In the event the RETAILER files an amended Sales and Use Tax return, or report, or if additional Sales and Use Tax is due and owing by RETAILER to the State of Texas, as determined by or as approved by the State of Texas affecting the Sales Tax Receipts for a previous Grant Period, then the Grant payment for the Grant Period immediately following the CITY's receipt of Sales Tax Receipts from the State of Texas shall be adjusted accordingly. As a condition precedent to payment of such adjusted Grant payment, RETAILER shall provide CITY with a copy of any such amended Sales and Use Tax report or return, and the approval thereof by the State of Texas. This Section V.F.4. shall survive termination or expiration of this Agreement.
5. The RETAILER shall promptly, but in no case later than thirty (30) days after discovery or determination, notify the CITY in writing of any adjustments found, determined, or made by RETAILER, the State of Texas or by an outside audit that results or will result in either a refund or the payment of additional Sales and Use Tax. Such notification shall also include the amount of any such adjustment in Sales and Use Tax Receipts. In the event the State of Texas determines that the CITY erroneously received Sales Tax Receipts, or that the amount of Sales and Use Tax paid to the CITY exceeds the correct amount of Sales and Use Tax for a previous Grant Period for which RETAILER has received a Grant, the RETAILER shall, within thirty (30) days after receipt of notification thereof from the CITY specifying the amount by which such Grant exceeds the amount to which the RETAILER was entitled pursuant to such State of Texas determination, pay such amount to CITY. Alternatively, CITY may at its option adjust the Grant(s) for the Grant Period(s) immediately following such State of Texas determination of such incorrect amount. As a condition precedent to payment of such refund or adjustment, the CITY shall provide RETAILER with a copy of such determination from the State of Texas. This Section V.F.5. shall survive termination or expiration of this Agreement.
6. The RETAILER shall provide the CITY, and maintain during the term of this Agreement, a Waiver of Sales Tax Confidentiality that authorizes the State of Texas to release to the CITY Sales and Use Tax information pertaining to RETAILER during the term. The Waiver of Sales Tax Confidentiality shall include but not be limited to the following documentation:
  - i. Information regarding the amount of Sales and Use Tax collected and paid to the State by the RETAILER as a result of the sale of Taxable Items by the RETAILER at the Premises for the applicable Grant Period;

- ii. A copy of all Sales and Use Tax returns and reports, direct payment and self-assessment returns, Sales and Use Tax prepayment returns, direct payment permits and reports, including amended Sales and Use Tax returns or reports, filed by RETAILER during the term showing Sales and Use Tax collected (including Sales and Use Tax paid directly to the State pursuant to direct payment certificate) by the RETAILER for the sale of Taxable Items consummated at the Premises for the applicable Grant Period.
- 7. The CITY agrees, to the extent allowed by law, to keep all information and documentation received from the State of Texas pursuant to this Agreement confidential. The CITY will only provide access to such information to its governing officials, employees, independent contractors or agents on a “need-to-know” basis and will use such information solely for the purposes of determining RETAILER’s entitlement to a Grant. In the event the CITY is requested or becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose such confidential information the CITY shall provide RETAILER with prompt written notice of such request or requirement so RETAILER may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section.
- 8. During the term of this Agreement, the RETAILER shall within thirty (30) days after the end of each calendar month provide the CITY with a Sales Tax Certificate. The CITY shall have no duty to calculate the Sales Tax Receipts or determine RETAILER’s entitlement to any Grant or pay any Grant during the term of this Agreement until such time as RETAILER has provided the CITY a Sales Tax Certificate for the applicable Grant Period. The CITY may, but is not required to, provide the RETAILER with a form for the Sales Tax Certificate required herein. At the request of the CITY, RETAILER shall provide such additional documentation as may be reasonably requested by CITY to evidence, support, and establish the Sales and Use Tax paid and collected (including Sales and Use Tax paid directly to the State of Texas pursuant to a direct payment permit) by RETAILER for the sale of Taxable Items consummated at the Premises and received by the CITY from the State of Texas. The Sales Tax Certificate shall at a minimum contain, include, or be accompanied by the following:
  - i. A schedule detailing the amount of Sales and Use Tax collected by the RETAILER, and paid to the State of Texas as a result of the sale of Taxable Items by the RETAILER consummated in the CITY at the Premises for the applicable Grant Period.
  - ii. A copy of all Sales and Use Tax returns and reports, direct payment and self-assessment returns, Sales and Use Tax prepayment returns, direct payment permits and reports, sales and use tax audit

assessments, including amended sales and use tax returns or reports, filed by RETAILER, showing Sales and Use Tax collected (including sales and use tax paid directly to the State of Texas pursuant to a direct payment certificate) by the RETAILER for the sale of Taxable Items consummated in the CITY at the Premises for the applicable Grant Period.

## VI.

### **Procurement of Goods and Services from Arlington Businesses and/or Historically Underutilized Businesses; Community Cooperation**

- A. In performing this Agreement, OWNER and RETAILER agree to use diligent efforts to purchase all goods and services from Arlington or Tarrant County businesses whenever such goods and services are comparable in availability, quality, and price. As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors, and suppliers where at least 51% of the ownership of such contractor, subcontractor, or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other personas or organizations proposed for work on this Agreement, the OWNER and RETAILER agree to consider this policy and to use their reasonable best efforts to select and employ such companies and persons for work on this Agreement.
  
- B. In performing this Agreement, OWNER agrees to use commercially reasonable efforts to:
  - 1. Create opportunities for its employees to receive information regarding residential relocation to the City of Arlington.
  - 2. Cooperate with education institutions in the City of Arlington to create apprenticeships, internships, and mentoring opportunities.
  - 3. Cooperate with the City of Arlington in future business developments and recruitment efforts when appropriate.

## VII.

### **Default and Termination**

- A. OWNER is considered to be in default under this Agreement if OWNER fails to satisfy the conditions in Sections IV. A., B., C., E., F., G., H., I., J. and K. of this Agreement. RETAILER is considered in default of this Agreement if RETAILER fails to satisfy the conditions in Sections IV. D. and K. The CITY is considered to be in default under this Agreement if CITY fails to fulfill its obligations under Section V of this Agreement. If either OWNER, RETAILER, or CITY defaults (a "Default"), the defaulting party shall cure such Default within 30 days after the delivery of written notice of such Default from the other parties, or if such failure

cannot be cured within such 30-day period in the exercise of all due diligence, then if defaulting party commences an attempt to cure within such 30-day period, such longer period as the party thereafter continues diligently to prosecute the cure of such Default. Notice of a Default shall be in writing and shall be delivered by personal delivery or certified mail to the defaulting party at its address provided in Section X of this Agreement.

- B. If OWNER does not cure a Default of Sections IV. A., G., or H. in the time period allowed by this Agreement, the CITY's sole remedy is to terminate this Agreement as to Owner. If OWNER does not cure a Default of Sections IV. B., C., E., F., I., or J. in the time period allowed by this Agreement, the CITY's sole remedy is to terminate this Agreement as to Owner and seek repayment by OWNER of the Original Incentives as detailed in Section VIII.
- C. If RETAILER does not cure a Default of Section IV.D.(1) in the time period allowed by this Agreement, the CITY's sole remedy is to terminate this Agreement as to RETAILER. If RETAILER does not cure a Default of Section IV.D.(2) in the time period allowed by this Agreement, the CITY's sole remedies are to either suspend Grant payments until RETAILER cures the Default or terminate this Agreement as to RETAILER.
- D. Notwithstanding Section VII.E., if OWNER does not cure a Default of Section IV.E. in the time period allowed by this Agreement, the CITY may, in addition to any other remedies provided herein, terminate this Agreement as to RETAILER.
- E. If the CITY does not cure a Default within 30 days after the delivery of written notice, OWNER and RETAILER's remedy is to seek specific performance of the terms of this Agreement.

### **VIII.**

#### **Repayment of Original Incentives**

- A. During the term of this Agreement, should OWNER fail to cure a Default of Sections IV. B., C., E., F., I., or J. in the time period allowed by this Agreement, the CITY may terminate this Agreement as to OWNER and seek repayment by OWNER of the Original Incentives paid to OWNER in accordance with the following schedule:
  - 1. Termination occurs within first five (5) years from First Payment: CITY may seek repayment of up to 100% of the Original Incentives paid to OWNER.
  - 2. Termination occurs after first five (5) years from First Payment: CITY may seek repayment of a prorated amount of the Original Incentives paid to OWNER based upon the number of years remaining in the Original Term.

(Example: termination occurs in year seven (7) with 11 years remaining in the Original Term, repayment due is \$3,361,111.11 or 11/18 of \$5,500,000).

- B. Repayment of the Original Incentives paid to OWNER pursuant to Section VIII.A. shall become due 60 days following receipt of such demand.
- C. This Section VIII shall survive the termination of this Agreement.

## **IX.**

### **Effect of Sale or Lease of Property**

OWNER and RETAILER have the right (from time to time without the consent of CITY, but upon 15 days advanced written notice to CITY) to assign this Agreement, in whole or in part, to any entity that is controlled by or under common control with OWNER. OWNER has the right (from time to time without the consent of CITY, but upon 15 days advanced written notice to CITY) to collaterally assign this Agreement, in whole or in part, to OWNER's lender providing funds for construction of the Project. All other assignments must be approved in writing by CITY.

## **X.**

### **Notice**

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as any of the parties designate in writing, by certified mail postage prepaid or by hand delivery:

OWNER/RETAILER:

D.R. Horton, Inc.  
Attn: Ted Harbour  
1341 Horton Circle  
Arlington, Texas 76011

With a copy to:

D.R. Horton Materials, Inc.  
Attn: Cade Anderson  
1341 Horton Circle  
Arlington, Texas 76011

CITY:

City of Arlington  
City Manager's Office  
Attn: Economic Development Manager  
P.O. Box 90231  
Arlington, Texas 76004-3231

**XI.**  
**City Council Authorization**

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

**XII.**  
**Severability**

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

**XIII.**  
**No Third-Party Beneficiaries**

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree that: (1) this Agreement only affects matters/disputes between the parties to this Agreement (other than as specifically set forth herein with respect to assignment of this Agreement by OWNER to an affiliate of OWNER), and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may be in a contractual relationship with CITY, OWNER, RETAILER or a combination of the parties; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY, OWNER, or RETAILER.

**XIV.**  
**Remedies; No Waiver**

- A. Except as otherwise provided in Section VII, if a party is in default, the aggrieved party(ies) may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity.
- B. The CITY waives its governmental immunity from suit and immunity from liability as to any action brought by OWNER or RETAILER resulting from an uncured default by the CITY.
- C. No covenant or condition of this Agreement may be waived without consent of the parties. Forbearance or indulgence by any of the parties shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

**XV.**  
**Estoppel Certificate**

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested, will be addressed to a subsequent purchaser or assignee of OWNER or RETAILER, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without Default (or if Default exists the nature of same), the remaining term of this Agreement, the remaining incentives in effect, and such other matters reasonably requested by the party(ies) to receive the certificates.

**XVI.**  
**Applicable Law**

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

**XVII.**  
**Force Majeure**

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the obligations of this Agreement is delayed by reason of war, Act of God, fire or other casualty of a similar nature.

**XVIII.**  
**No Other Agreement**

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements, including the Original Agreement, regarding such subject matter, and may be amended, modified or supplemented only by an instrument or instruments in writing executed by the parties.

**XIX.**  
**Headings**

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

**XX.**  
**Successors and Assigns**

The parties to this Agreement each bind themselves and their successors, executors, administrators, and assigns to the other parties of this Agreement and to the successors,



executors, administrators, and assigns of such other parties in respect to all covenants of this Agreement.

With the exception of assignments permitted under Section IX, no successor, executor, administrator, or assign is valid in the place of the parties to this Agreement without the written consent of CITY.

**XXI.**  
**Execution of Agreement**

This Agreement must be executed within 60 days after the date this Agreement is authorized by the City of Arlington City Council and presented to OWNER and RETAILER for signature. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. This Agreement has been authorized by City Council on \_\_\_\_\_, 2019.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**D.R. HORTON, INC.**

BY \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Title

WITNESS:

\_\_\_\_\_

**D.R. HORTON MATERIALS, INC.**

BY \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Title

WITNESS:

\_\_\_\_\_

**CITY OF ARLINGTON, TEXAS**

BY \_\_\_\_\_  
JIM PARAJON  
Deputy City Manager

ATTEST:

\_\_\_\_\_  
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY \_\_\_\_\_

THE STATE OF TEXAS §  
§  
COUNTY OF TARRANT §

**D.R. HORTON, INC.**  
**Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, who is known to me or who was proved to me on the oath of \_\_\_\_\_ (*name of person identifying the acknowledging person*) or who was proved to me through \_\_\_\_\_ (*description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person*) to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **D.R. HORTON, INC.**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name

THE STATE OF TEXAS §  
§  
COUNTY OF TARRANT §

**D.R. HORTON MATERIALS, INC.**  
**Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, who is known to me or who was proved to me on the oath of \_\_\_\_\_ (*name of person identifying the acknowledging person*) or who was proved to me through \_\_\_\_\_ (*description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person*) to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **D.R. HORTON MATERIALS, INC.**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF TARRANT   §

**CITY OF ARLINGTON, TEXAS**  
**Acknowledgment**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary's Printed Name

**Exhibit "A"**  
**Premises**

Lot 29-R, WILLIAM O'NEAL ADDITION, an Addition to the City of Arlington, Tarrant County, Texas, according to the plat filed for record under Clerk's File No. D209201985, Deed Records of Tarrant County, Texas.