

CONSTRUCTION, FUNDING, AND DEVELOPMENT AGREEMENT

THIS CONSTRUCTION, FUNDING, AND DEVELOPMENT AGREEMENT (this “Agreement”) is by and between the **CITY OF EULESS, TEXAS**, a home-rule municipality of the State of Texas (the “City”), the **BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER FOUR, CITY OF EULESS, TEXAS** (the “TIRZ Board”) and **CADG 901 AIRPORT FREEWAY, LLC**, a Texas limited liability company (the “Developer”).

ARTICLE I DEFINITIONS

The following terms shall have the meanings ascribed to them in this Article I for purposes of this Agreement.

“**Actual Costs**” means the Authorized Improvement Costs actually paid or incurred for construction and installation of the Authorized Improvements.

“**Annual Service Plan Update**” means the annual update to the Service and Assessment Plan conducted pursuant to Section IV of the Service and Assessment Plan.

“**Authorized Improvements**” means collectively, the public improvements listed in **Exhibit A** hereto and more fully described in Section III and Appendix B of the Service and Assessment Plan and authorized by Section 372.003 of the PID Act which are to be undertaken for the benefit of property within the District. An individual Authorized Improvement, including a completed segment or part, shall be referred to as an **Authorized Improvement**.

“**Authorized Improvement Costs**” shall have the meaning assigned to such term in the Service and Assessment Plan.

“**Budgeted Costs**” means the costs shown on **Exhibit A** attached hereto.

“**Certification for Payment**” means a certificate, substantially in the form of **Exhibit B** hereto or otherwise agreed to by the Developer and the City, specifying the amount of work performed and the amount charged for that work, including materials and labor costs, provided each month to the City by the Developer and approved by the City Engineering Consultant and the Inspector, to request payment from the Construction Fund for Authorized Improvement Costs.

“**City Engineering Consultant**” means an independent consultant engaged by the City to evaluate the extent of work performed on Authorized Improvements by reviewing materials on hand and other factors in order to analyze whether the value of work performed is consistent with

submitted Certifications for Payment and the detailed budget documents approved by the City, for the purpose of determining the Developer's entitlement to payments from the Construction Fund.

"City Manager" means the City Manager of the City of Euless, or her designee.

"Construction Contracts" means the contracts for the construction of the Authorized Improvements. "Construction Contract" means any one of the Construction Contracts.

"Construction Fund" means the fund by such name created by the City where certain monies shall be deposited and shall be used for the payment of Authorized Improvement Costs.

"Cost" means the Budgeted Costs, or the cost of an Authorized Improvement as reflected in a Construction Contract, if greater.

"Cost Underrun" means, with respect to each Authorized Improvement, the amount by which the Budgeted Cost exceeds the Cost or Actual Cost, as appropriate, of such Authorized Improvement.

"Cost Overrun" means, with respect to each Authorized Improvement, the Cost or Actual Cost as appropriate of such Authorized Improvement in excess the Budgeted Cost.

"Deed of Trust" means the Deed of Trust as described in Section 3.07 below and as shown in the attached Exhibit E.

"District" or "PID" means the Euless Midtown Public Improvement District created by the City on August 25, 2015.

"Final Completion" means completion of an Authorized Improvement (including a section or phase of an Authorized Improvement) in compliance with this Agreement and existing City standards for dedication and acceptance.

"Inspector" means an employee or other individual engaged by the City to inspect the construction of the Authorized Improvements for compliance with all rules and regulations and the requirements of this Agreement.

"PID Act" means the Public Improvement District Assessment Act, Texas Local Government Code, Chapter 372, as amended.

"Plans" means the plans, specifications, schedules and related construction contracts for the Authorized Improvements, respectively, approved pursuant to the applicable standards and directives of the City, and any other applicable governmental entities.

"Promissory Note" means the Promissory Note as described in Section 3.07 below and as shown in the attached Exhibit C.

“Service and Assessment Plan” means the Service and Assessment Plan and any Annual Service Plan Updates approved by the City Council pursuant to the PID Act.

“Substantial Completion” means the time at which the construction of an Authorized Improvement (or specified part thereof) has progressed to the point where such Authorized Improvement (or a specified part thereof) is sufficiently complete to be utilized for the purposes for which it is intended, as determined by the City.

“TIRZ” means Tax Increment Reinvestment Zone Number 4, City of Euless, Texas, created by the City on September 22, 2015, in accordance with the TIRZ Act, which zone is coterminous with the property in the District, for the purpose of promoting development of property within the TIRZ.

“TIRZ Act” means VTCA Tax Code, Chapter 311, as amended.

“TIRZ Fund” means the tax increment fund into which TIRZ Revenue is deposited.

“TIRZ Revenue” means the total revenue collected and required by the TIRZ Act to be deposited into a tax increment fund each calendar year from participating taxing entities (excluding ad valorem tax revenues attributable to the mineral estate, including but not limited to oil and gas).

“Warranty Deed” means the Warranty Deed as described in Section 6.01 below and as shown in the attached Exhibit F.

ARTICLE II RECITALS

Section 2.01. The District and the Authorized Improvements.

(a) The Developer has undertaken a project to improve and develop a site of approximately 56 acres within the City of Euless as a first class mixed use development with urban residential and retail uses to be known as Euless Midtown.

(b) The City, on August 25, 2015, approved the creation of the District under the PID Act for the financing of the acquisition, construction and installation of the Authorized Improvements within Euless Midtown.

(c) As an inducement to Euless Midtown, the City, on September 22, 2015, approved the creation of the TIRZ and appointed the TIRZ Board.

(d) The TIRZ Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality consistent with a project and financing plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs, as defined in the TIRZ Act.

(e) The TIRZ Board and the City have approved the TIRZ Project and Financing Plan (“Project and Financing Plan”).

(f) The Authorized Improvements are eligible to be financed by the collection of assessments from property within the District (the “PID Assessments”) to the extent specified in the Service and Assessment Plan and subject to the provisions of this Agreement.

(g) The owners of the real property within the PID (the “PID Properties”) have consented to the assessment of the PID Properties to pay for the Authorized Improvements in an amount which will be reduced by the amount of any TIRZ Revenue, as provided in this Agreement.

(h) The TIRZ Board authorized the execution of this Agreement for the construction of the Authorized Improvements that are authorized in the Project and Financing Plan, and authorized the use of TIRZ Revenue to reduce the amount of the PID Assessment on the PID Properties to fund the construction of the Authorized Improvements under the conditions set forth herein.

(i) The City has issued certificates of obligation (“COs”) in the amount of \$16,450,000.00 for the purpose of funding the Authorized Improvements.

(j) The City is authorized by Article 3, Section 52-a of the Texas Constitution and Section 380.001, Texas Local Government Code, to provide economic development grants to promote local economic development and stimulate business and commercial activities in the City.

(k) The City has determined that the Euless Midtown project will promote local economic development and stimulate business and commercial activity as well as provide for additional residential opportunities for citizens within the municipality.

(l) The City desires to enter into an agreement with the TIRZ Board to loan funds sufficient to pay the incentives set forth herein, under Section 380.001.

(m) The City Council has determined that quality mixed use developments with urban residential and retail uses stimulate commercial activity as well as provide for additional residential opportunities for citizens within the City and will promote local economic development and stimulate commercial and business activity.

(n) The PID Assessments, collected annually, will be used to pay the annual debt service on the COs that will be used to fund the Authorized Improvements.

(o) The amount of PID Assessments will be offset annually by the amount of TIRZ Revenues that are available in the TIRZ Fund for funding Authorized Improvements, as provided in this Agreement.

(p) The Developer will undertake the construction and installation of the Authorized Improvements for acquisition and acceptance by the City in accordance with the terms and conditions contained in this Agreement.

Section 2.02. Agreements. In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

ARTICLE III FUNDING

Section 3.01. City Disbursement.

(a) Upon the sale by the City of the COs, whose purpose is to fund the Authorized Improvements, an amount not to exceed \$16,417,980.00 (which is the net result of the sale of the COs), will be loaned to the TIRZ Board and placed into a project fund (the “Construction Fund”) as provided in Section 3.01(b) below. From this amount, an amount equal to the maximum annual debt service payment (principal and interest) on the COs (the “CO Debt Reserve”) shall be identified and held in a debt reserve fund (the “Debt Reserve Fund”) as described in Subsection 3.01(c) below.

(b) The Construction Fund shall be a TIRZ Fund that is used to finance the construction and acquisition of the Authorized Improvements in the PID. The City and the TIRZ Board agree to utilize the monies in the Construction Fund to reimburse the Developer for the cost of construction of the Authorized Improvements on the schedule and according to the terms set forth in this Agreement. The TIRZ Board authorizes the City Manager to withdraw funds from the Construction Fund and utilize TIRZ Revenue as provided in this Agreement.

(c) The Debt Reserve Fund shall be a separate City fund that is used to meet the obligations of the CO bond covenants and to provide for the payment of the annual debt service of the COs in the event that sufficient funds are not available in the Debt Service Fund (described in Section 3.05 below) to make such payments. The Construction Fund and the Debt Reserve Fund will be separate funds, not comingled with any other fund of the City.

(d) If the City is required to utilize money from the Debt Reserve Fund to make annual payments of the COs, the City will transfer funds from the Construction Fund to restore the Debt Reserve Fund to the amount of the CO Debt Reserve. The CO Debt Reserve shall be maintained in the Debt Reserve Fund until the taxable assessed value of the property in the District equals or exceeds \$92,000,000. When this occurs, the balance in the Debt Reserve Fund will be disbursed to the Construction Fund for funding of Authorized Improvements. At this point, the City will assume responsibility for maintaining an adequate debt reserve as required by the bond covenants until such time as the bonds are redeemed.

Section 3.02. Reimbursements.

(a) Pursuant to the terms of this Agreement, the City will be responsible for making authorized payments from the Construction Fund. The City's obligation with respect to the payment of the Authorized Improvements from the Construction Fund shall be limited to the Budgeted Costs, and shall be payable solely from amounts on deposit for the payment of such costs as provided herein and in the Service and Assessment Plan. The Developer agrees and acknowledges that it is responsible for all Cost Overruns, except to the extent as provided for in Section 4.04 below.

(b) The obligation of owners of Assessable Property (as defined in the Service and Assessment Plan) within the District, including the Developer to the extent it owns any Assessable Property within the District, to pay Assessments is not in any way dependent on the availability of amounts in the Construction Fund to pay for all or any portion of the Authorized Improvement Costs hereunder.

(c) It is understood and agreed that the City shall have the right to withhold any payment to the Developer from the Construction Fund pursuant to an approved Certification for Payment if the Developer has failed to provide any required security under Section 3.07 or is delinquent on the payment of any PID Assessments or taxes on property owned by the Developer within the District.

(d) Upon payment of all Authorized Improvement Costs contemplated by this Agreement, any amounts in the Construction Fund will first be used to maintain the required Debt Reserve Fund and the remainder will be transferred to the Debt Service Fund for the payment of the annual debt service of the COs.

(e) The Developer acknowledges that any lack of availability of amounts in the Construction Fund to pay the Authorized Improvement Costs shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for the Authorized Improvements required by this Agreement or any other agreement to which the Developer is a party, or any governmental approval to which the Developer or any land within the District is subject.

Section 3.03. Developer Disbursements. The City and the Developer agree that upon the presentation of evidence satisfactory to the City Manager, the City will, on a monthly basis, cause payments of up to a total amount of \$16,417,980.00 from the Construction Fund, subject to the availability of funds in the Construction Fund, to the persons entitled to the payment for Authorized Improvement Costs. These payments will be delivered to the Developer or its designees after approved by the City pursuant to the submission of a Certification for Payment, in accordance with this Agreement.

Section 3.04. PID Assessments.

(a) The City will levy an assessment on all PID Properties for the cost of the Authorized Improvements in accordance with the approved Service and Assessment Plan for the PID. The amount of the annual assessment will be offset by the amount of any TIRZ Revenue available for that purpose. In the event any assessment made on any PID Properties owned by the Developer within the District is deemed to be invalid, unenforceable or uncollectable, the Developer shall be responsible to make payments to the City in the amount of the assessment within thirty (30) days of receipt of notice from the City.

(b) The initial PID Assessment will be made by the City in January, 2016 in an amount necessary to fully satisfy the first annual debt service payment on the COs. The Developer shall pay this PID Assessment no later than July 15, 2016. If this initial PID Assessment or any future PID Assessment on property owned by the Developer within the District is not timely paid, the Developer shall not be entitled to receive any additional reimbursement payments from the Construction Fund for construction of the Authorized Improvements unless and until the PID Assessment is paid in full. In addition, in the event that any PID Assessment on property owned by the Developer within the District is not timely paid, the City may elect to terminate this Agreement.

Section 3.05. PID Monies. On an annual basis, the PID Assessments collected by the City shall be placed into two PID funds: the PID Administrative Fund and the Debt Service Fund.

1) PID Administrative Fund. Funds collected for administrative costs shall be placed into a separate fund (the "PID Administrative Fund") to pay the annual administrative costs incurred by the City in administering the PID. This amount will be determined on an annual basis by the City. Once these monies are placed into the PID Administrative Fund, the City may use some or all of the monies in this fund to reimburse the City for the annual expense of administering the District.

2) Debt Service Fund. Funds collected from PID Assessments for debt service payments shall be placed into a separate fund (the "Debt Service Fund") to pay the City's annual debt service on the COs. Any remaining amounts after payment of the annual debt service shall remain in the Debt Service Fund, and shall be used to pay the next year's CO debt obligation.

Section 3.06 TIRZ Monies. On an annual basis, the City shall collect the ad valorem and sales tax increment, as identified in the TIRZ Project and Financing Plan, and place that amount into the TIRZ Fund. The City shall be entitled to withdraw as a priority payment from the TIRZ Fund, and transfer to the Debt Service Fund, an amount of money necessary to fund the City's annual debt service payments on the COs. In addition, the City shall be entitled to withdraw money from the TIRZ Fund to restore any amounts transferred from the Construction Fund to the Debt Reserve Fund under Section 3.01. Any remaining amounts in the TIRZ Fund shall then be used,

on an annual basis, to reduce the PID's annual assessment in accordance with the Service and Assessment Plan.

Section 3.07. Security for Authorized Improvements.

(a) Prior to receiving any reimbursement pursuant to Section 3.02, The-the Developer shall provide to the City, ~~on or before February 16, 2016,~~ a promissory note in the amount of \$2,700,000.00 (the "Promissory Note") payable to the City, which Promissory Note shall only be paid to the City if the Developer sells its portion of the PID Property in its entirety (it is anticipated that the Developer will sell lots and parcels in the normal course of Development, from time to time) to a non-related entity prior to the PID Property reaching at least \$92,000,000.00 in taxable assessed value, or this Agreement is terminated by the City and the Developer does not refund the \$2,700,000.00 to the City as provided for in Section 8.02(b)(ii) below. Once the PID Property reaches at least \$92,000,000.00 in taxable assessed value, the Authorized Improvements are Substantially Completed, and the Promissory Note has not been redeemed, the Promissory Note shall be returned uncollected to the Developer.

(b) The Promissory Note shall include a personal guaranty by Mehrdad Moayed for a specific term as provided for in the Promissory Note agreeing to pay the full amount of the Note in the event the Developer fails to make such required payment.

(c) The Promissory Note shall further grant to the City a first lien in the amount of \$2,700,000.00 on the parcels described as Blocks R, S, and T on Exhibit D. The lien shall be further secured by a deed of trust (the "Deed of Trust") in the form attached hereto as Exhibit E.

**ARTICLE IV
CONSTRUCTION OF AUTHORIZED IMPROVEMENTS**

Section 4.01. Duty of Developer to Construct.

(a) All Authorized Improvements shall be constructed by or at the direction of the Developer in accordance with the Plans and in accordance with this Agreement. The Plans shall be prepared by a qualified engineering firm licensed in the State of Texas. The Developer will secure all applicable zoning, platting and site plan approvals and will obtain all necessary permits prior to commencing construction of the Authorized Improvements.

(b) The Developer shall commence construction of the Authorized Improvements no later than July 1, 2016, and shall achieve Substantial Completion no later than July 1, 2019. The Developer shall perform all of its obligations and shall conduct all operations with respect to the construction of the Authorized Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The

Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Authorized Improvements to be acquired and accepted by the City from the Developer as provided in this Agreement.

(c) The Developer shall not be relieved of its obligation to construct each Authorized Improvement and, upon completion, inspection, and acceptance, convey each such Authorized Improvement to the City in accordance with the terms hereof, even if there are insufficient funds in the Construction Fund to pay the Actual Costs thereof. In any event, this Agreement shall not affect any obligation of the Developer under any other agreement to which the Developer is a party or any governmental approval to which the Developer or any land within the District is subject, with respect to the improvements required in connection with the development of the land within the District.

Section 4.02. No Competitive Bidding. The Authorized Improvements shall not require competitive bidding pursuant to Sections 252.022(9) and 380.001 of the Texas Local Government Code, and Section 311.010 of the Texas Tax Code, as amended.

Section 4.03. Independent Contractor. In performing this Agreement, the Developer is an independent contractor and not the agent or employee of the City with respect to the Authorized Improvements.

Section 4.04. Remaining Funds after Completion of an Authorized Improvement. Upon the Final Completion of an Authorized Improvement (or segment or phase thereof) and payment of all outstanding invoices for such Authorized Improvement, if the Actual Cost of such Authorized Improvement is less than the Budgeted Cost (a “Cost Underrun”), any remaining Budgeted Cost will be available to pay Cost Overruns on any other Authorized Improvement. Upon receipt of a Certification for Payment from the Developer properly documenting the request for payment, the City shall promptly confirm whether such remaining amounts are available to pay such Cost Overruns, and determine how to use such monies for the payment of the work for other Authorized Improvements. Any confirmed Cost Underrun for any Authorized Improvement shall be available to pay Cost Overruns on any other Authorized Improvement, and may be added to the amount approved for payment in any Certification for Payment.

Section 4.05. Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (herein referred to as “Change Orders”) required for the construction of the Authorized Improvements. The Developer may approve and implement any Change Orders, even if such Change Order would increase the Cost of an Authorized Improvement, but the Developer shall be solely responsible for payment of any Cost Overruns resulting from such Change Orders, except for amounts available and approved pursuant to Section 4.04.

ARTICLE V

PAYMENT FOR AUTHORIZED IMPROVEMENTS

Section 5.01. Payment Requests for the Authorized Improvements.

(a) No payment hereunder shall be made from the Construction Fund for an Authorized Improvement until a Certification for Payment is received from the Developer for work with respect to an Authorized Improvement (or the completed segment or phase) and approved for payment by the City. The Certification for Payment shall include all required releases from contractors, subcontractors and suppliers of material who have provided labor and materials for the Authorized Improvements showing they have been paid for such labor and materials. This shall include the total costs incurred in the construction of the Authorized Improvements, including without limitation, geotechnical fees, surveying fees, labor, construction materials and building materials and supplies, and any municipal fees.

(b) Upon receipt of a Certification for Payment (along with all accompanying documentation required by the City) from the Developer, the City Engineering Consultant and the Inspector shall conduct a review in order to confirm that the work with respect to such Authorized Improvement identified therein for which payment is requested was performed in accordance with all applicable governmental laws, rules and regulations and applicable Plans therefor and with the terms of this Agreement. The City Engineering Consultant shall confirm that the Inspector has approved the construction and that the Certification for Payment is complete and shall verify and approve the Actual Cost of such work specified in such Certification for Payment (collectively, the "Developer Compliance Requirements"). The approval of the Certification for Payment by the City Engineering Consultant shall constitute a representation by the City Engineering Consultant to the City that the Developer Compliance Requirements have been satisfied with respect to the Authorized Improvement identified therein. The City Engineering Consultant shall also conduct such review as is required in his discretion to confirm the matters certified in the Certification for Payment. The Developer agrees to cooperate with the City Engineering Consultant in conducting each such review and to provide the City Engineering Consultant with such additional information and documentation as is reasonably necessary for the City Engineering Consultant to conclude each such review. Upon completion of such review and confirmation, the City Engineering Consultant will approve the Certification for Payment for submittal to the City Manager.

(c) Within fourteen (14) days following receipt of a Certification for Payment from the City Engineering Consultant, the City Manager shall either (1) approve the Certification for Payment and authorize payment from those funds available in the Construction Fund, or (2) provide the Developer with written notification of disapproval of all or part of a Certification for Payment, specifying the basis for any such disapproval. Any dispute as to the appropriateness of payment of all or a portion of the Certification for Payment may be resolved by mediation between the parties, which the parties will endeavor to hold within thirty (30) days of a request.

Section 5.02. Payment for Authorized Improvement.

(a) Upon receipt of a reviewed and approved Certification for Payment, as evidenced by the signature of the City Manager, the City shall, on a monthly basis, make payment from available funds in the Construction Fund pursuant to the terms of the Certification for Payment in an amount not to exceed the Budgeted Cost, except as provided for in Section 4.04.

(b) Notwithstanding any other provisions of this Agreement, the City shall make payment directly to the person or entity specified by the Developer in an approved Certification for Payment, including: (1) a general contractor or supplier of materials or services or jointly to the Developer (or any permitted assignee of the Developer) and the general contractor or supplier of materials or services, as indicated in an approved Certification for Payment; (2) to the Developer or any assignee of the Developer if an unconditional lien release is attached to such Certification for Payment, and, (3) to the Developer, or to the third party contractor directly, at the Developer's request as specified in the Certification for Payment, if the Developer provides a general contractor's or supplier of materials' unconditional lien release for the portion of the work covered by the Certification for Payment. Neither the City, City Council, City Manager, City Engineering Consultant nor Inspector shall have any liability for relying on the accuracy of the payee information in any Certification for Payment as presented by the Developer or its assignees.

(c) Should the amount of money available in the Debt Service Fund and Debt Reserve Fund be insufficient to cover the City's annual debt service payments on the COs, the City may use any and all amounts in the Construction Fund to make any required annual debt service payments. The Developer agrees that the City will offset from the initial payment made to the Developer for the Authorized Improvements the amount required to initially fund the Debt Reserve Fund, as set forth in Section 3.01.

Section 5.03 Right of Offset. The City may, at its option, offset any amounts due and payable to the Developer under this Agreement against any debt (including taxes) lawfully due to the City, or any other taxing unit participating in the TIRZ, or the payments under this Agreement, related to the PID Properties, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt in question has been reduced to judgment by a court.

Section 5.04. Prohibition on Liens. Notwithstanding any delay or failures by the City to make any payments from the Construction Fund pursuant to any Certification for Payment, the Developer shall be responsible for assuring that no liens or encumbrances are placed on any property upon which any Authorized Improvements are constructed (however, the Developer may obtain and place liens up to the value of \$10,000,000.00 on PID Property other than the specific parcels that shall contain the Authorized Improvements and the parcel pledged to secure the Developer's obligations under Section 3.07). Nothing in this Agreement shall be deemed to prohibit the Developer or the City from contesting in good faith the validity or amount of any mechanic's or materialman's lien and/or judgment nor limit the remedies available to the

Developer or the City with respect thereto so long as such delay in performance shall not subject the Authorized Improvement to foreclosure, forfeiture, or sale.

Section 5.05. Payment for City Engineering Consultant. All costs incurred by the City for the services of the City Engineering Consultant shall be paid from the Construction Fund and the City Manager is authorized to withdraw funds from the Construction Fund for this purpose.

ARTICLE VI OWNERSHIP AND TRANSFER OF AUTHORIZED IMPROVEMENT

Section 6.01. Authorized Improvements to be Owned by the City – Title Evidence. It is the intent and agreement of the Developer and the City that the Authorized Improvements will become the property of the City. In addition to any designation on a plat of rights-of-way, easements, park land or other dedications, all land to be transferred to the City as an Authorized Improvement shall be conveyed to the City by a warranty deed (the “Warranty Deed”) in the form attached hereto as Exhibit F ~~separate instrument approved by the City~~ and sufficient for purposes of obtaining title insurance. All costs of title insurance and costs associated with closing on the conveyance shall be borne by the Developer. The Developer shall furnish to the City a preliminary title report for land with respect to the Authorized Improvements, including any related rights-of-way, to be acquired and accepted by the City from the Developer, for review and approval at least 30 calendar days prior to the transfer of title of an Authorized Improvement to the City. The City shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City’s use and enjoyment of any part of the land or right-of-way covered by the preliminary title report. In the event the City does not approve the preliminary title report, the City shall not be obligated to accept title to the Authorized Improvement until the Developer has cured such objections to title to the satisfaction of the City. The failure of the Developer to provide a title report acceptable to the City on any Authorized Improvements shall constitute an event of default under this Agreement. Upon failure of the Developer to cure such default within thirty (30) days of receipt of notice from the City, the Developer shall refund to the City all amounts paid from the Construction Fund for the cost of such Authorized Improvements.

Section 6.02. Authorized Improvement Constructed on City Land. If the Authorized Improvement is on land owned by the City, the City hereby grants to the Developer a license to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Authorized Improvement. The provisions for inspection and acceptance of such Authorized Improvement otherwise provided herein shall apply.

ARTICLE VII
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 7.01. Representations, Covenants and Warranties of the Developer. The Developer represents and warrants for the benefit of the City as follows:

(a) Organization. The Developer consists of one limited liability company duly formed, organized and validly existing under the laws of the State of Texas, is in compliance with the laws of the State of Texas, and has the power and authority to own its properties and assets and to carry on its business in the State of Texas as now being conducted as hereby contemplated.

(b) Authority. The Developer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by the Developer.

(c) Binding Obligation. The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on the Developer's part and this Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

(d) Compliance with Law. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the District or the Authorized Improvements in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the District or the Authorized Improvements.

(e) Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the Construction Fund for the acquisition or construction of any improvements that are not part of the Authorized Improvements, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the Certifications for Payments.

(f) Financial Records. For a period of four (4) years after completion of the Authorized Improvements, the Developer covenants to maintain proper books of record and account for the construction of the Authorized Improvements and all Costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City or its agent at any reasonable time during regular business hours on reasonable notice.

(g) Plans. The Developer represents that it has obtained or will obtain approval of the Plans from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. The Developer further agrees that, subject to the

terms hereof, the Authorized Improvements will be constructed in full compliance with such Plans and any Change Orders thereto consistent with the PID Act and this Agreement.

(h) Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the City Manager, the City Engineering Consultant or the Inspector related to the status of construction of improvements within the District and the anticipated completion dates for future improvements.

(i) Financial Resources. The Developer represents and warrants that it has the financial resources, or the ability to obtain sufficient financial resources, to meet its obligations under this Agreement.

(j) Determination of Rough Proportionality. The Developer agrees that the construction of the Authorized Improvements is roughly proportional to the need created by the development of the Property in the District and the Developer hereby waives any claim therefor that it may have. The Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said construction and dedication are related both in nature and extent to the impact of the development of Eules Midtown. The Developer waives and releases all claims against the City related to rough proportionality and individual determination requirements mandated by Subchapter Z of Chapter 212, Texas Local Government Code, as well as other requirements of a nexus between development conditions and the projected impact of the Eules Midtown development.

Section 7.02 Undocumented Workers. As required by Subchapter B of Chapter 2264 of the Texas Government Code, the Developer certifies that to the Developer's knowledge it does not and will not knowingly employ an undocumented worker in connection with the construction of the Authorized Improvements. If after receiving the reimbursements set forth in this Agreement the Developer is convicted under 8 USC Section 1324a(f) for employing an undocumented worker in connection with the construction of the Authorized Improvements, the Developer shall repay the amount of the reimbursement (or portion that it has received) plus interest at a rate of the prime rate published in the Wall Street Journal plus two percent (2%) per annum, not later than the 120th day after the date the City notifies the Developer of the violation.

Section 7.03. Indemnification and Hold Harmless. The Developer shall indemnify and hold harmless and assume the defense of, the TIRZ Board, the City, and the officers, employees and agents of the TIRZ Board and the City (including the City Engineering Consultant and the Inspector), and each of them (each an "Indemnified Party"), from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from the breach of any provision of this Agreement by the Developer, the negligent design, engineering and/or construction by the Developer or any architect, engineer or contractor hired by the Developer of any of the Authorized Improvements acquired from 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 Authorized Improvements, or any claims of persons employed by the Developer or its agents to construct the Authorized Improvements. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the bad faith negligence or willful misconduct of any Indemnified Party.

Nothing in this section may be construed as waiving any governmental immunity available to the TIRZ Board or the City under state law. This provision is solely for the benefit of the Developer, the TIRZ Board, and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

Section 7.04. Use of Monies by the City. The City agrees not to take any action to expend, disburse or encumber the monies held in the Construction Fund or any monies to be transferred thereto for any purpose other than the purposes permitted by the Service and Assessment Plan or this Agreement. Prior to the acceptance of all Authorized Improvements, the City agrees not to modify or supplement the Service and Assessment Plan without the approval of the Developer if as a result or as a consequence of such modification or supplement (a) the amount of monies that would otherwise have been available to the Construction Fund for the Authorized Improvement Costs is reduced, delayed or deferred, (b) the obligations or liabilities of the Developer are or may be increased or otherwise adversely affected in any manner, or (c) the rights of the Developer are or may be modified, limited, restricted or otherwise adversely affected in any manner.

Section 7.05. No Reduction of Assessments. The Developer agrees not to take any action or actions to reduce the total amount of PID Assessments to be levied as of the effective date of this Agreement.

ARTICLE VIII TERMINATION

Section 8.01. Termination by Consent. This Agreement may be terminated by the mutual, written consent of the City, the TIRZ Board and the Developer, in which event the City may either execute contracts for or perform any remaining work related to the Authorized Improvements not accepted by the City or other appropriate entity and use all or any portion of funds on deposit in the Construction Fund, the Debt Service Fund, the Debt Reserve Fund or other amounts transferred to such funds to pay for same, and the Developer shall have no claim or right to any further payments for Authorized Improvement Costs hereunder, except as otherwise may be provided in such written consent.

Section 8.02. Termination by City.

(a) The City may terminate this Agreement upon the occurrence of any of the following events:

1) The Developer is in default or otherwise breaches its obligations under Sections 3.04, 3.07, 4.01, 5.04, 6.01, 7.01 or 7.02 of this Agreement and fails to cure such default or breach within thirty (30) days of receipt of notice from the City.

2) The Developer is delinquent in the payment of any PID Assessment or taxes on any PID Properties owned by the Developer within the District.

(b) Upon termination, at the option of the City, the Developer shall (i) convey to the City title to any or all properties upon which Authorized Improvements were constructed, in whole or in part, or upon which Authorized Improvements were intended to be constructed, and (ii) refund to the City \$2,700,000, within thirty (30) days of notice from the City. Should the Developer fail to convey title or make this payment within thirty (30) days, the City may make demand for payment and collect on the Promissory Note.

Section 8.03. Use of TIRZ Funds upon Termination. Upon termination of this Agreement, the City may either execute contracts for or perform any remaining work related to the Authorized Improvements not accepted by the City or other appropriate entity and use funds in the Construction Fund to pay for same. The Developer shall be entitled to payment for any work it has completed up to the date of termination but the Developer shall have no claim or right to any further payments for Authorized Improvement Costs hereunder. Upon completion of the Authorized Improvements by the City, any future TIRZ Revenues shall be deposited in the TIRZ Fund and shall be allocated for uses approved by the TIRZ Board.

**ARTICLE IX
MISCELLANEOUS**

Section 9.01. Limited Liability of City and TIRZ Board. The Developer agrees that any and all obligations of the City and TIRZ Board arising out of or related to this Agreement are special obligations of the City, and the City's or the TIRZ Board's obligations to make any payments hereunder are restricted entirely to the monies, if any, in the Construction Fund and from no other source. Neither the TIRZ Board, the City, the City Engineering Consultant, the Inspector, nor any other officer, employee or agent of them shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

Section 9.02. Audit. The City Engineering Consultant or a finance officer of the City shall have the right, during normal business hours and upon the giving of three business days' prior written notice to the Developer, to review all books and records of the Developer pertaining to

costs and expenses incurred by the Developer only with respect to any of the Authorized Improvements and any bids taken or received or contracts awarded for the construction thereof or materials therefor.

Section 9.03. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by email and shall be followed by mailing an original of the same within twenty-four (24) hours after such transmission) or seventy-two (72) hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To the **City**: City of Euless, Texas
Attn: City Manager
201 N. Ector Drive,
Euless, Texas 76039
Fax: (817) 685-1416
Email: lgetchell@eulesstx.gov

With a copy to: Taylor, Olson, Adkins, Sralla & Elam, LLP
Wayne K. Olson
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Email: wolson@toase.com

To the **TIRZ Board**: TIRZ #4
City of Euless
Attention: Chairman
201 N. Ector Drive,
Euless, Texas 76039

With a copy to: Taylor, Olson, Adkins, Sralla & Elam, LLP
Wayne K. Olson
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Email: wolson@toase.com

To the **Developer**: CADG 901 Airport Freeway, LLC
Attn: Mehrdad Moayed
1800 Valley View Lane, Suite 300
Farmers Branch, Texas 75234
FAX: 817.391.2501
Email: laura@centurionamerican.com

With a copy to: Miklos Law, PLLC
Robert Miklos
1800 Valley View Lane, Suite 300
Farmers Branch, Texas 75234
E-mail: robert@mikloslegal.com

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

The City shall advise the Developer of the name and address of any City Engineering Consultant or Inspector who is to receive any notice or other communication pursuant to this Agreement.

Section 9.04. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 9.05. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement shall not be assigned by the Developer without the prior written consent of the City and the TIRZ Board, which consent shall not be unreasonably withheld or delayed, except pursuant to a collateral assignment to any person providing construction financing to the Developer for the Authorized Improvements, provided such person expressly agrees to assume all obligations of the Developer hereunder if there is a default under such financing and such person elects to complete the Authorized Improvements, and except pursuant to the assignment of the rights to any receivables. In connection with any consent of the City and the TIRZ Board, the City or the TIRZ Board may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder and/or upon any other reasonable factor which the City or the TIRZ Board deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned and shall not be effective until approved by the City and the TIRZ Board.

Section 9.06. Other Agreements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the District. Nothing herein shall be construed as affecting the City's, the TIRZ Board's or the Developer's rights or duties to perform their respective obligations under other agreements, use regulations or subdivision requirements relating to the development of the lands in the District.

Section 9.07. Force Majeure. Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, damage to work in progress by casualty or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

Section 9.08. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights upon the default of any other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by such other party with the terms of this Agreement thereafter.

Section 9.09. Merger. 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.

Section 9.10. Mutual Assistance. The City, the TIRZ Board and the Developer shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and provisions of this Agreement.

Section 9.11. Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City, the TIRZ Board and the Developer any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Agreement contained by or on behalf of the City, the TIRZ Board or the Developer shall be for the sole and exclusive benefit of the City, the TIRZ Board and the Developer.

Section 9.12. Amendment. This Agreement may be amended, from time to time in a manner consistent with the PID Act by a written document executed in counterparts, each of which shall be deemed an original.

Section 9.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 9.14 Venue. The obligations of the parties to this Agreement are performable in Tarrant County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Tarrant County, Texas.

Section 9.15 Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

Section 9.16 Prior Agreements. This Agreement supersedes all prior agreements between the parties, whether oral or written, covering the subject matter of this Agreement, including the Construction, Funding and Development Agreement previously approved by the City Council on January 26, 2016 and by the TIRZ Board on January 27, 2016.

Section 9.176. Effective Date. This Agreement shall become effective upon its date of execution as provided below. All representations and warranties set forth herein shall be deemed to have been made on the Effective Date.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this the _____ day of _____, 2016.

CITY OF EULESS

By: _____
Linda Martin, Mayor

ATTEST:

Kim Sutter, City Secretary

CADG 901 Airport Freeway, LLC,

a Texas limited liability company

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

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

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

Mehrdad Moayed, Manager

ACKNOWLEDGEMENT

This instrument was acknowledged before me on the ____ day of _____, 2016 by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of CADG Holdings, LLC, as Sole Member of CADG 901 Airport Freeway, LLC, a Texas limited liability company on behalf of said company.

Notary Public, in and for the State of Texas
My Commission expires: _____

BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER FOUR, CITY OF EULESS, TEXAS

By: _____
Linda Martin, Chairman

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on the ____ day of _____, 2016, by Linda Martin, Chairman of the Board of Directors of Tax Increment Reinvestment Zone Number Four, City of Eules, Texas, on behalf of said Board.

Notary Public, in and for the State of Texas
My Commission expires: _____

Exhibit A

List of Authorized Improvements and Budgeted Costs

Description of Improvements	Estimated Cost
Paving	\$2,500,255
Demolition and remediation	<u>\$2,700,000</u>
<i>Subtotal: Roadway improvements</i>	<i>\$5,200,255</i>
Water distribution system improvements	\$1,787,071
Sanitary sewer collection system improvements	\$1,540,751
Storm sewer collection system improvements	\$1,522,678
Right-of-Way/ land acquisition:	<u>\$2,100,000</u>
<i>Subtotal: Storm sewer collection system improvements</i>	<i>\$3,622,678</i>
Hardscaping and amenities	\$2,111,201
Bonding & Mobilization	\$431,900
Civil Eng. Design, Surveying, Staking & CA services	\$1,145,559
Construction Contingency	\$578,565
Subtotal: Other soft costs	\$2,156,024
Subtotal: Estimated Authorized Improvement Costs	\$16,417,980
Add: Net costs for issuing CO	\$32,020
Total Estimated Costs	\$16,450,000

The costs shown above are current estimates provided by project engineer and may be revised as needed.

Exhibit B

FORM OF CERTIFICATION FOR PAYMENT

The undersigned is an agent for **CADG 901 AIRPORT FREEWAY, LLC**, (the “Developer”) and requests payment from the Construction Fund (as defined in the Construction, Funding, and Development Agreement) from the City of Euless, Texas (the “City”) in the amount of _____ for labor, materials, fees, and/or other general costs related to the construction of certain Authorized Improvements related to the Midtown Public Improvement District (the “Authorized Improvements”). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Construction, Funding, and Development Agreement (the “CFD Agreement”).

In connection to the above referenced payment, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certification for Payment on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the below referenced Authorized Improvements has not been the subject of any prior payment request submitted to the City or, if previously requested, no disbursement was made with respect thereto.
3. The amount listed for the Authorized Improvements below is a true and accurate representation of the costs associated with the creation, acquisition, or construction of said Authorized Improvement(s), and such costs are in compliance with the CFD Agreement and the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the CFD Agreement and the Service and Assessment Plan.
5. All conditions set forth in the CFD Agreement for the payment hereby requested have been satisfied. All required unconditional lien releases are attached to this Certification for Payment.
6. The work with respect to the Authorized Improvement(s) referenced below (or its completed segment) has been completed and the City may begin inspection of the Authorized Improvement(s).
7. The Developer agrees to cooperate with the City, the City Engineering Consultant and the Inspector in conducting its review of the requested payment, and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.

8. As required by Texas Local Government Code, Section 252.051, as amended, the Developer has provided the City with an independent appraisal of any Authorized Improvement consisting of any real property, or any interest in real property including easements and rights-of-way, to be acquired by the City including specifically monies on deposit in the Construction Fund.

Payments requested are as follows:

[Information regarding Payee, amount, and deposit instructions]

Payee / Description of Authorized Improvement	Total Cost of Authorized Improvement	Budgeted Cost of Authorized Improvement	Amount to be paid from the Construction Fund
TOTAL			

Attached hereto, are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments.

Pursuant to the CFD Agreement, after receiving this Certification for Payment, the City is authorized to inspect the Authorized Improvement (or completed segment) and confirm that said work has been completed in accordance with all applicable governmental laws, rules, and Plans. Afterwards, the City must then accept or deny this Certification for Payment.

I hereby declare that the above representations and warranties are true and correct.

CADG 901 AIRPORT FREEWAY, LLC

By: _____

Name: _____

Title: _____

Date: _____

Approved:

Approved:

City Engineering Consultant

Inspector

Date: _____

Date: _____

APPROVAL OF REQUEST BY CITY

The City is in receipt of the attached Certification for Payment, acknowledges the Certification for Payment, and finds the Certification for Payment to be in order. After reviewing the Certification for Payment, the City approves the Certification for Payment and directs that said payments be made from the Construction Fund.

City of Euless

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT C
Promissory Note

EXHIBIT D
Blocks R, S, and T

EXHIBIT E
Deed of Trust

EXHIBIT F
Warranty Deed