

**RESOLUTION NO. 2021-09**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL,  
TEXAS APPROVING A REIMBURSEMENT AGREEMENT RELATING  
TO THE WOOD LEAF RESERVE PUBLIC IMPROVEMENT DISTRICT.**

**WHEREAS**, on January 18, 2021 the City Council of the City of Tomball, Texas (the “City”) passed and approved a resolution amending and restating the resolution creating the Wood Leaf Reserve Public Improvement District (the “District”) covering approximately 90.4 acres of land described by metes and bounds in said Resolution (the “District Property”); and

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

**WHEREAS**, the District Property is being developed in accordance with that certain “Wood Leaf Reserve Development Agreement,” executed by and between the Developer, and the City effective January 18, 2021, (the “Development Agreement”); and

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

**WHEREAS**, Chesmar Homes, LLC, a Texas limited liability company (the “Developer”) is the developer of the District Property; and

**WHEREAS**, the City Council intends to pass and approve one or more ordinances (collectively, the “Assessment Ordinance”) which, among other things, will approve one or more service and assessment plans (collective, the “SAP”) that will levy Assessments on assessable property in each improvement area or phase, and establish the dates upon which interest on such Assessments will begin to accrue and collection of such assessments will begin; and

**WHEREAS**, from revenues received from the Assessments levied on property within each improvement area or phase of the District Property and pursuant to applicable SAP, the City intends to reimburse the Developer for all of a portion of the costs of the Authorized Improvements in each improvement area or phase pursuant to and in the manner set forth in a Reimbursement Agreement by and between the Developer and the City (the “Reimbursement Agreement”); and

**WHEREAS**, the City and the Developer wish to enter into the Reimbursement Agreement to evidence the City’s intention to reimburse the Developer for all or a portion of the

costs of the Authorized Improvements from Assessments levied on assessable property within the District; Now Therefore,

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

Section 1: The capitalized terms defined in the recitals to this Resolution are hereby approved and adopted as a part of this Resolution. Capitalized terms not herein defined are defined in the Reimbursement Agreement or in the Service and Assessment Plan.

Section 2: The City Council hereby approves the Reimbursement Agreement in substantially the form attached hereto as **Exhibit A**, with such changes as may be approved by the City Manager, and authorizes the Mayor to execute and the City Secretary to attest such Agreement.

Section 3: This resolution shall take effect immediately from and after its passage by the City Council of the City.

PASSED, APPROVED AND EFFECTIVE on the \_\_\_\_\_ day of March 2021.

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City Secretary  
City of Tomball, Texas

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Mayor  
City of Tomball, Texas

[SEAL]

**EXHIBIT A**  
**REIMBURSEMENT AGREEMENT**

**WOOD LEAF RESERVE PUBLIC IMPROVEMENT DISTRICT  
REIMBURSEMENT AGREEMENT**

This Wood Leaf Reserve Public Improvement District Reimbursement Agreement (this “Reimbursement Agreement”) is executed by and between the City of Tomball, Texas (the “City”) and Chesmar Homes, LLC a Texas limited liability company, (the “Developer”) (individually referred to as a “Party” and collectively as the “Parties”) to be effective as of February \_\_, 2021 (the “Effective Date”).

**RECITALS**

**WHEREAS**, capitalized terms used in this Reimbursement Agreement shall have the meanings given to them in this Reimbursement Agreement or in the Wood Leaf Development Agreement, dated January 18, 2021; and

**WHEREAS**, on January 18, 2021, the City Council passed and approved a resolution creating the Wood Leaf Reserve Public Improvement District (the “District”) covering approximately 90.4 acres of land described by metes and bounds in said Resolution (the “District Property”); and

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

**WHEREAS**, the District Property is being developed in accordance with that certain “Wood Leaf Development Agreement,” executed by and between the Developer, and the City effective January 18, 2021, (the “Development Agreement”); and

**WHEREAS**, the District Property is being developed in three phases (each a “Phase”), and the City intends to levy special assessments for each Phase against the Assessed Property within such phase to pay the costs of Authorized Improvements that confer a special benefit on the Assessed Property within such phase; and

**WHEREAS**, the Developer desires to begin construction of the Authorized Improvements prior to the City’s levy of Assessments and the City desires to memorialize its intent to levy assessments and to reimburse the Developer for the costs of such Authorized Improvements from Assessments and/or PID Bonds; and

**WHEREAS**, the Authorized Improvements as defined in the Development Agreement or as shall be defined in one or more Service and Assessment Plans, as amended, updated or supplemented to include all phases of development, (the “SAP”) are to be constructed to serve the District Property, as described and depicted in the SAP and

**WHEREAS**, the City Council intends to pass and approve an Ordinance (the “Assessment Ordinance”), which, among other things, will approve an SAP (including Assessment Rolls for each phase of development), levies assessments on property within the District (the

“Assessments”), and establishes the dates upon which interest on assessments will begin to accrue and collection of Assessments will begin; and

**WHEREAS**, the SAP will set forth the costs of the Authorized Improvements in each Phase of Development (plus financing costs to be set forth in the SAP) to be assessed against each Phase of the District Property (the “Authorized Improvements Costs”); and

**WHEREAS**, the SAP will allocate the Authorized Improvements Costs for each Phase to property within each Phase of the District Property, and the Assessments will be reflected on one or more Assessment Rolls as approved by the City Council; and

**WHEREAS**, the SAP and the Assessment Ordinance will provide, in part, that an Assessment or Assessments may be paid in full at any time, and if an Assessment is not paid in full, it shall be due and payable in Annual Installments plus interest for a period of no more than 30 years or until the Assessment is paid in full; and

**WHEREAS**, all revenue received and collected by the City from the collection of the Assessments and Annual Installments (excluding Delinquent Collection Costs and Administrative Expenses) (the “Assessment Revenue”) shall be deposited first for the payment of debt service on PID Bonds (if such bonds have been issued) issued by the City for the applicable Phase and second, into an assessment fund and accounts therein for each Phase, that is segregated from all other funds of the City (the “Reimbursement Fund”); and

**WHEREAS**, the Assessment Revenue deposited into the Reimbursement Fund shall be used to reimburse Developer and its assigns for the Authorized Improvements Costs advanced in a principal amount to be set forth in the SAP, plus interest as set forth herein; and

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

**WHEREAS**, at the discretion of the City and in accordance with the Development Agreement, prior to or contemporaneously with the issuance of any PID Bonds (as defined herein), the Developer and City may amend this Agreement and the Development Agreement as determined necessary by City’s bond counsel for issuance of any such bonds, for compliance with applicable law and for compliance with the obligations of the parties under this Agreement.

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

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

2. The City intends to levy Assessments to finance the cost of the Authorized Improvements and to reimburse the Developer for the costs of the Authorized Improvements incurred by Developer prior to the levy and/or to pay directly the costs of the Authorized Improvements.
3. Strictly subject to the terms, conditions, and requirements and solely from the revenues as herein provided and in accordance with the Development Agreement, the City agrees to pay the Developer and the Developer shall be entitled to receive from the City, the amount equal to the actual costs of the Authorized Improvements paid by the Developer as to be set forth in the SAP, in accordance with the terms of this Reimbursement Agreement, in a principal amount not to exceed the amount to be set forth in the SAP (the “Reimbursement Amount”), plus interest accrued, as provided in Section 2(a) below. The City hereby covenants to create, concurrently with the execution of this Reimbursement Agreement, a separate fund to be designated the “Reimbursement Fund” containing accounts therein for each Phase of development. The Reimbursement Amount is payable from Assessment Revenue to be deposited in the Reimbursement Fund as described below and in accordance with the Development Agreement:
  - a. The Reimbursement Amount is payable solely from: (i) Assessment Revenue received and collected by the City from Assessments levied in each Phase of development and deposited into the applicable account of the Reimbursement Fund after the payment of debt service on any PID Bonds issued for such Phase (ii) the net proceeds (after funding reserve funds, payment of costs of issuance, including the costs paid or incurred by the City and City Administrative Expenses) of one or more series of PID Bonds issued by the City to fund all or a portion of the Reimbursement Amount in accordance with the terms of the Development Agreement and the SAP and secured by the Assessment Revenue from the applicable Phase; or (iii) a combination of items (i) and (ii) immediately above. The Assessment Revenue from each Phase shall be received, collected and deposited into the applicable account of the Reimbursement Fund subject to the following limitations:
    - i. Calculation of the Assessments for each Phase and the first Annual Installment for a Lot or Parcel in each phase shall begin as shall be provided in the SAP.
    - ii. After the levy thereof by the City, if PID Bonds are not issued concurrently therewith, Assessments collected in each Phase for the Reimbursement Amount allocated to such Phase shall accrue simple interest annually at the rates to be set forth in the SAP, such rates to be in compliance with Subsections 372.023(e)(1) and (e)(2) of the PID Act. Such interest shall accrue upon Assessment levy only if PID Bonds are not issued for such

Phase. If accrued, interest shall begin and continue on the unpaid principal amount of the Assessments as shall be set forth in the SAP until the earlier of (i) the expiration of the term to be set forth in the SAP, or (ii) the issuance of PID Bonds to fund a portion of the Reimbursement Amount, as reduced by annual payments made pursuant to (iv) below.

- iii. Assessment Revenue dedicated to the payment of all or a portion of the Reimbursement Amount and interest thereon, shall be deposited into the applicable account of the Reimbursement Fund after the payment of debt service on the outstanding PID Bonds.
  - iv. The Developer shall receive the Unpaid Balance in annual installments as shall be set forth in the SAP and in Section 3 below from the applicable accounts of the Reimbursement Fund, for the time period to be set forth in the SAP or until PID Bonds are issued, and as allowed under Section 2(a) above.
4. The Reimbursement Amount, once determined in the SAP, plus the interest as described above, if accruing, are collectively, the “Unpaid Balance.” The Unpaid Balance is secured by and payable solely from Assessment Revenue received and collected by the City in each Phase for such purpose and deposited into the applicable account of the Reimbursement Fund subject to Section 3(a)(iii), and Section 5 herein. No other City funds, revenue, taxes, or income of any kind shall be used to pay the Unpaid Balance, even if the Unpaid Balance is not paid in full by the term of this Agreement, as set forth herein. Payment of Assessment Revenue for each Phase from the applicable account of the Reimbursement Fund after the payment of debt service on outstanding PID Bonds, shall be made annually to the Developer subject to the term of this Reimbursement Agreement as set forth in Section 21. The outstanding Unpaid Balance and the Reimbursement Amount shall be reduced by the amount of each annual payment to the Developer from the applicable account of the Reimbursement Fund.
  5. This Reimbursement Agreement shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or a debt or other obligation of the City payable from any source other than Assessment Revenue received, collected and deposited into the Reimbursement Fund. The City covenants that it will comply with the provisions of this Reimbursement Agreement, the Development Agreement, and the PID Act, including provisions relating to the administration of the District and the enforcement and collection of assessments, and all other covenants provided therein. Notwithstanding its collection efforts, if the City fails to receive all or any part of the Assessment Revenue in any Phase or does not receive an amount in excess of the annual debt service due on the outstanding PID Bonds, and, as a result, is unable to make transfers from the Assessment Revenue Fund for payments to the Developer as required under this

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

6. PID Bonds may be issued to fund the Authorized Improvement Costs upon levy of the Assessments. If Assessments are levied concurrently with the issuance of PID Bonds, such PID Bond Proceeds shall reimburse or pay directly the Authorized Improvement Costs. The City may also levy Assessments in one or more Phases prior to the issuance of PID Bonds. If PID Bonds are issued to fund all or a portion of the Reimbursement Amount after the levy of Assessments, the net proceeds of such PID Bonds shall be used to pay the outstanding Reimbursement Amount, as reduced by payments made pursuant to Section 3 herein, due to the Developer under this Reimbursement Agreement for the costs of Authorized Improvements in the applicable Phase as shall be set forth in the SAP. However, no PID Bonds shall be issued unless the funds necessary to complete the Authorized Improvements in the Phase for which the PID Bonds are being issued, are deposited with the net proceeds of the applicable series of PID Bonds on the closing date of such PID Bonds, or alternately, the Developer has expended funds (verified by the City) for construction of the Authorized Improvements to be financed with the PID Bonds in an amount that is greater than the deposit that would have otherwise been required at the time such PID Bonds are issued. The Reimbursement Agreement shall terminate on the earlier of PID Bonds to fund the Reimbursement Amount as reduced by payments made pursuant to Section 3 herein, (iii) the expiration of the Assessments as to be set forth in the SAP, or (iv) termination of this Agreement pursuant to an Event of Default or termination event herein or under the Development Agreement. Notwithstanding the foregoing, the Developer shall only be entitled to repayment of the costs of the Authorized Improvements is less than the amounts set forth in the SAP, the Developer shall not be entitled to such excess amounts. The Developer represents and warrants that it will not request payment with respect to any Authorized Improvement that is not part of the Authorized Improvements identified in the SAP and it will follow all procedures set forth in the Development Agreement with respect to certification for payments, including for payments of the Unpaid Balance from the Reimbursement Fund. It is the City's current intent to issue PID Bonds either at the time of the Assessment levy or at a later date to fund the Reimbursement Amount. Notwithstanding, the issuance of such PID Bonds is solely within the discretion of the City.
7. The Developer has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole or in part without the consent of (but with written notice to) the City, the Developer's right, title, or interest in the revenue streams identified in this Reimbursement Agreement including, but not limited to, any right, title, or interest of the Developer in and to payment of the Unpaid Balance (any of the foregoing, a "Transfer," and the person or entity to whom the Transfer is made, a "Transferee"). Notwithstanding the foregoing, however, no Transfer shall be effective until five (5) days after Developer's

written notice of the Transfer is received by the City, including for each Transferee the information required by Section 9 below. The City may rely on any notice of a Transfer received from the Developer without obligation to investigate or confirm the validity or occurrence of such Transfer. No conveyance, transfer, assignment, mortgage, pledge or other encumbrance shall be made by the Developer or any successor or assignee of the Developer that results in the City being an “obligated person” within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission. The Developer waives all rights or claims against the City for any such funds provided to a third party as a result of a Transfer for which the City has received notice. The City shall not be required to make payments pursuant to this Reimbursement Agreement to more than two parties, nor shall it be required to execute any consent or make any representations or covenants relating to such assignment.

8. The obligations of the City under this Reimbursement Agreement are non-recourse and payable only from the Reimbursement Fund and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income, or property. None of the City or any of its elected or appointed officials or any of its officers or employees shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of this Reimbursement Agreement or their acts or omissions under this Reimbursement Agreement.
9. Nothing in this Reimbursement Agreement is intended to constitute a waiver by the City of any remedy the City may otherwise have outside this Reimbursement Agreement against the Developer, any Transferee, or any other person or entity involved in the design, construction or installation of the Authorized Improvements. The obligations of Developer hereunder shall be those as a Party hereto and not solely as an owner of property in the District. Nothing herein shall be constructed, nor is intended, to affect the City’s or Developer’s rights and duties to perform their respective obligations under other agreements, regulations and ordinances.
10. This Reimbursement Agreement is being executed and delivered, and is intended to be performed in the State of Texas. Except to the extent that the laws of the United States may apply to the terms hereof, the substantive laws of the State of Texas shall govern the validity, construction, enforcement, and interpretation of this Reimbursement Agreement. In the event of a dispute involving this Reimbursement Agreement, exclusive venue for such dispute shall lie in any court of competent jurisdiction in Harris County, Texas.
11. Any notice required or contemplated by this Reimbursement Agreement shall be signed by or on behalf of the Party giving the Notice, and shall be deemed effective as follows: (i) when delivered by a national company such as FedEx or UPS with evidence of delivery signed by any person at the delivery address regardless of whether such person was the named addressee; or (ii) 72 hours after the notice was deposited with the United States

Postal Service, Certified Mail, Return Receipt Requested. Any Party may change its address by delivering written notice of such change in accordance with this section. All Notices given pursuant to this Section shall be addressed as follows:

To the City: City Manager  
401 Market Street  
Tomball, TX 77375

With a copy to: Attn: City Attorney  
Olson & Olson, LLP  
2727 Allen Parkway, Suite 600  
Houston, TX 77019

To the Developer: Attn: Tom Markiewicz  
Chesmar Homes, LLC  
480 Wildwood Forest Dr., Suite 800  
The Woodlands, Texas 77380

With a copy to: Don Klein  
480 Wildwood Forest Dr., Suite 800  
The Woodlands, Texas 77380

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

13. Remedies:

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

periods that are provided to the Developer. The election by a Transferee to cure a Failure by the Developer shall constitute a cure by the Developer.

- b. Notwithstanding the foregoing, the following are Events of Default under this Agreement:
- i. The Developer shall fail to pay to the City any monetary sum hereby required of it as and when the same shall become due and payable and shall not cure such default within thirty (30) days after the later of the date on which written notice thereof is given by the City to the Developer, as provided in this Agreement.
  - ii. The Developer shall fail to comply in any material respect with any term, provision or covenant of this Agreement (other than the payment of money to the City), and shall not cure such failure within ninety (90) days after written notice thereof is given by the City to the Developer;
  - iii. The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;
  - iv. The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;
  - v. The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days; OR
  - vi. The failure by Developer or any Affiliate to pay Impositions, and Assessments on property owned by the Developer and/or any Affiliates within the PID, if such failure is not cured within thirty (30) days.
  - vii. A Developer event of default under the Development Agreement.
  - viii. The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.
- c. If the City is in Default, the Developer's sole and exclusive remedies shall be to: (1) seek a writ of mandamus to compel performance by the City; or (2) seek specific enforcement of this Reimbursement Agreement
- d. If the Developer is in Default, the City may pursue any legal or equitable remedy or remedies, including, without limitation, actual damages, and termination of this Agreement. The City shall not terminate this Agreement unless it delivers to the Developer a second notice expressly providing that the City will terminate within

thirty (30) additional days. Termination or non-termination of this Agreement upon a Developer Event of Default shall not prevent the City from suing the Developer for specific performance, actual damages, excluding punitive, special and consequential damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination. In the event the Developer fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, then to the extent such failure constitutes an Event of Default hereunder, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the amount so paid and the reasonable out of pocket costs incurred by the City in said performance shall be due and payable by the Developer to the City within thirty (30) days after the Developer's receipt of an itemized list of such costs.

- e. No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity.
  - f. The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.
14. The Developer shall assume the defense of, and indemnify and hold harmless the City's inspector, the City employees, officials, officers, representative and agents of the City and each of them (each an "Indemnified Party") from and against, all actions, damages, claims, losses or expense of every type and description to which they may be subject or put, by reason of, or resulting from the breach of any provisions of this Reimbursement Agreement by the Developer, the Developer's nonpayment under contracts between the Developer and its consultants, engineers, advisors, contractors, subcontractors and suppliers in the provision of the Improvement Area #1 Improvements constructed by Developer, or any claims by persons employed by the Developer relating to the construction of such projects. Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the willful misconduct or gross negligence of any Indemnified Party. The City does not waive its defenses and immunities, whether governmental, sovereign, official or otherwise and nothing in this Reimbursement Agreement is intended to or shall confer any right or interest in any person not a party hereto.
15. To the extent there is a conflict between this Reimbursement Agreement and an indenture securing the PID Bonds issued to fund the Reimbursement Amount or the SAP, the indenture securing such PID Bonds or the SAP shall control as the provisions relate to the Assessments.

16. The failure by a Party to insist upon the strict performance of any provision of this Reimbursement Agreement by the other Party, or the failure by a Party to exercise its rights upon a Default by the other Party shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Party with the provisions of this Reimbursement Agreement.
17. The City does not waive or surrender any of its governmental powers, immunities, or rights except to the extent permitted by law and necessary to allow the Developer to enforce its remedies under this Reimbursement Agreement.
18. Nothing in this Reimbursement Agreement, express or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Developer and its assigns any rights, remedies, or claims under or by reason of this Reimbursement Agreement, and all covenants, conditions, promises, and agreements in this Reimbursement Agreement shall be for the sole and exclusive benefit of the City and the Developer.
19. The City represents and warrants that this Reimbursement Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Reimbursement Agreement on behalf of the City has been duly authorized to do so. The Developer represents and warrants that this Reimbursement Agreement has been approved by appropriate action of the Developer, and that the individual executing this Reimbursement Agreement on behalf of the Developer has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Reimbursement Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions and to the extent provided by law.
20. This Reimbursement Agreement represents the entire agreement of the Parties and no other agreement, statement or promise made by any Party or any employee, officer or agent of any Party with respect to any matters covered hereby that is not in writing and signed by all the Parties to this Agreement shall be binding. This Reimbursement Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Reimbursement Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Reimbursement Agreement; and (b) the remainder of this Reimbursement Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.
21. This Reimbursement Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

22. The term of this Reimbursement Agreement is the earlier of (i) the expiration of the Assessments as set forth in the SAP, (ii) until the Unpaid Balance is paid in full in accordance herewith, (iii) the issuance of Future Improvement Area #1 Bonds to fund the Reimbursement Amount, as reduced by payments made pursuant to Section 3 herein, or (iv) termination pursuant to an Event of Default under this Agreement or under the Development Agreement, whichever occurs first. If the Developer defaults under this Reimbursement Agreement or the Development Agreement, the Development Agreement shall not terminate with respect to the costs of the Improvement Area #1 Improvements that have been previously been approved by the City pursuant to a Certification for Payment (as defined in the Development Agreement) prior to the date of default.
23. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Reimbursement Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to Force Majeure, to perform its obligations under this Reimbursement Agreement, then the obligations affected by the Force Majeure shall be temporarily suspended. Within fifteen (15) business days after the occurrence of a Force Majeure, the Party claiming the right to temporarily suspend its performance, shall give Notice to all the Parties, including a detailed explanation of the Force Majeure and a description of the action that will be taken to remedy the Force Majeure and resume full performance at the earliest possible time. For purposes of this Reimbursement Agreement, "Force Majeure" means any act that (i) materially and adversely affects the affected Party's ability to perform the relevant obligations under this Reimbursement Agreement or delays such affected Party's ability to do so, (ii) is beyond the reasonable control of the affected Party, (iii) is not due to the affected Party's fault or negligence and (iv) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts. "Force Majeure" shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (e) fires; (f) epidemics or pandemics that result in a governmental action that stops or delays construction or halts, impedes or delays the operations of the City; and (g) actions or omissions of a governmental authority (including the actions of the City in its capacity as a governmental authority) that were not caused by, voluntarily induced or promoted by the affected Party (including the submission of incomplete or erroneous information to the City), or brought about by the breach of its obligations under this Reimbursement Agreement or any applicable law or failure to comply with City regulations; provided, however, that under no circumstances shall Force Majeure include any of the following events: (u) changes in market condition; (v) any strike or labor dispute involving the employees of the Developer or any affiliate of the Developer, other than industry or

nationwide strikes or labor disputes; or (w) the occurrence of any manpower, material or equipment shortages.

24. Any amounts or remedies due pursuant to this Reimbursement Agreement are not subject to acceleration.
25. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Reimbursement Agreement is a contract for goods or services, will not boycott Israel during the term of this Reimbursement Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.
26. The Developer hereby represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.
27. The Developer agrees to either (i) file a Texas Ethics Commission Disclosure of Interested Parties form to the City or (ii) represent in writing that it is exempt from filing of such form, no later than the date upon which the City Council approves this Reimbursement Agreement

[SIGNATURE PAGES TO FOLLOW]

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

ATTEST:

**CITY OF TOMBALL**

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

*Signature page to Wood Leaf Reserve Reimbursement Agreement*

CHESMAR HOMES, LLC

By: 

Name: Donald P. Klein

Title: CEO

*Signature page to Wood Leaf Reserve Reimbursement Agreement*