

RABURN RESERVE

DEVELOPMENT AGREEMENT

BETWEEN

HT RABURN RESERVE DEVELOPMENT L.P.

THE CITY OF TOMBALL, TEXAS

Dated: October 7, 2019

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RABURN RESERVE DEVELOPMENT AGREEMENT

This Raburn Reserve Development Agreement (this “**Agreement**”), dated as of October 7, 2019 (the “**Effective Date**”), is entered into between IHT Raburn Reserve Development L.P. a Texas limited partnership (the “**Developer**”), and the City of Tomball, Texas (the “**City**”), a home-rule city and municipal corporation, acting by and through its duly authorized representative.

Recitals:

WHEREAS, unless otherwise defined: (1) all references to “sections” shall mean to sections of this Agreement; (2) all references to “exhibits” shall mean exhibits to this Agreement which are incorporated as part of this Agreement for all purposes; and (3) all references to “ordinances” or “resolutions” shall mean ordinances or resolutions adopted by the City Council of the City of Tomball (the “City Council”); and

WHEREAS the Developer currently has under contract to purchase and plans to acquire and to develop, in phases, approximately 105 acres of real property depicted on Exhibit A attached hereto (the “Property”) within the corporate limits of the City as a single-family residential development, in accordance with the applicable City Regulations (the “Project”); and

WHEREAS, in order to incentivize the development of the Property and encourage and support economic development within the City and to promote employment, the City desires to facilitate the development of the Property through the financing of certain public infrastructure (the “Public Improvements” as defined herein) and constructing additional public improvements within the Property; and

WHEREAS, in order to finance the Public Improvements, the City Council intends to create a public improvement district that is coterminous with the boundaries of the Property (the “PID”) in accordance with Chapter 372 Texas Local Government Code, as amended (the “PID Act”); and

WHEREAS, the City recognizes that financing of the Public Improvements confers a special benefit to the Property within the PID; and

WHEREAS, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement), adopt the Assessment Ordinance (as defined herein) and adopt the SAPs (as defined herein) which provide for the construction, and financing of the Public Improvements pursuant to the Service and Assessment Plan (“SAP”), payable in whole or in part by and from Assessments levied against property within the PID (whether through a cash reimbursement or through an issuance of PID Bonds); and

WHEREAS, upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement, the City intends to levy Assessments on all benefitted property located within the PID and issue PID Bonds (as defined herein) up to a maximum aggregate principal amount of \$15,000,000 for payment or reimbursement of the Public Improvements included in the SAP; and

WHEREAS the payment and reimbursement for the Public Improvements shall be solely from the installment payments of Assessments and/or proceeds of the PID Bonds and the City shall never be responsible for the payment of the Public Improvements or the PID Bonds from its general fund or its ad valorem tax collections, past or future or any other source of City revenue or any assets of the City of whatsoever nature; and

WHEREAS, the City recognizes the positive impact that the construction and installation of the Public Improvements for the PID will bring to the City and will promote state and local economic development; to stimulate business and commercial activity in the City; for the development and diversification of the economy of the State; development and expansion of commerce in the State, and elimination of employment or underemployment in the State;

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Article have the meanings assigned to them in the Recitals or this Article, and all such terms include the plural as well as the singular.

“Actual Costs” is defined in the Service and Assessment Plan.

“Affiliates” of Hines Acquisitions, LLC means any other person directly controlling, or directly controlled by or under direct common control with the Developer. As used in this definition, the term “control,” “controlling” or “controlled by” shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of the Developer, or (b) direct or cause the direction of management or policies of the Developer, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of the Developer or any affiliate of such lender.

“Agreement” has the meaning stated in the first paragraph of this Agreement.

“Annual Installments” means with respect to each parcel subject to Assessments, each annual payment of the Assessments, including any applicable interest, as set forth and calculated in the SAP.

“Applicable Law” means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority. Applicable Laws shall include, but not be limited to, City Regulations.

“Appraisal” means an appraisal of the property to be assessed in each PID by a licensed MAI Appraiser, such Appraisal to include as-complete improvements, including the Public Improvements and Private Improvements, necessary to get a Final Lot Value.

“Assessment Ordinance” means the City’s ordinances approving the SAP and levying Assessments on the benefitted Property within the PID.

“Assessments” means those certain assessments levied by the City pursuant to the PID Act and on benefitted parcels within the PID for the purpose of paying the costs of the Public Improvements, which Assessments shall be structured to be amortized over 30 years, including interest, all as set forth in or modified by the Service and Assessment Plan.

“City Regulations” mean provisions of the City’s Code of Ordinances, ordinances not codified, design standards, uniform and international building and construction codes, and other policies duly adopted by the City, which shall be applied to the Development, including zoning and the City’s Planned Development - 12.

“City Representative” means the City Manager or designee which may include a third party inspector or representative.

“City” means the City of Tomball, Texas.

“Closing Disbursement Request” means the Closing Disbursement Request described in Section 4.06, the form of which is attached as Exhibit G.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the applicable improvement, or portion thereof, as the case may be, on the Property; (ii) all necessary permits for the initiation of construction of the improvement, or portion thereof, as the case may be, on the Property pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Property for the construction of the applicable improvement, or portion thereof, as the case may be, has commenced.

“Completion of Construction” shall mean that (i) the construction of the applicable Public Improvement, or portion or segment thereof, as the case may be, benefitting the Property has been substantially completed pursuant to the City’s determination; and (ii) the City has with respect to applicable Public Improvements accepted the respective Public Improvements or segment or portion thereof.

“Completed Lots” means Fully Developed and Improved Lots for which (i) water, sanitary sewer, drainage and roads have been extended, and (ii) the City has authorized that a building permit may be obtained for construction on each lot.

“Construction Agreements” mean the contracts for the construction of the Public Improvements.

“Cost Overruns” means those Public Improvement Project Costs that exceed the budget cost set forth in the SAP(s) plus the Developer Cash Contribution.

“Cost Underruns” means Public Improvement Project Costs that are less than the budgeted cost set forth in the SAP(s).

“Delinquent Collection Costs” shall be defined in the SAP(s).

“Developer Cash Contribution” means that portion of the Public Improvement Project Costs that the Developer is contributing to initially fund the Public Improvements for each series of PID Bonds, as set forth in the SAP.

“Developer” means Hines Acquisitions, LLC its successors and permitted assigns.

“Development” means that single-family residential development consisting of approximately 400 single family homes to be developed and constructed on the Property pursuant to the City Regulations.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“End Buyer” means any developer, homebuilder, tenant, user, or owner of a Fully Developed and Improved Lot.

“Final Lot Value” means the developed lot values established by an Appraisal.

“Force Majeure” means any act that (i) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this 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; and (f) actions or omissions of a Governmental Authority (including the actions of the City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this 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: (g) economic hardship; (h) changes in market condition; (i) 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; (j) weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (k) the occurrence of any manpower, material or equipment shortages; or (l) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Developer, or any construction contracts for the Project Improvement and Public Improvements.

“Fully Developed and Improved Lot” means any lot in the Property, regardless of proposed use, intended to be served by the Public Improvements and for which a final plat has been approved by the City and recorded in the Real Property Records of Harris County, Texas.

“Governmental Authority” means any Federal, state or local governmental entity (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Applicable Law, pursuant to the terms of this Agreement or by agreement of the Parties.

“Home or Property Buyer Disclosure Program” means the disclosure program, as set forth in a document in the form of Exhibit H that establishes a mechanism to disclose to each End Buyer the terms and conditions under which their lot is burdened by the PID.

“Impact Fees” means all utility impact fees relating to the Public Improvements in each case assessed, imposed and collected by the City on the Property in accordance with the City Regulations adopted by the City, as may be revised or amended from time to time.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, sales taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Developer, or any property or any business owned by Developer within City.

“Indenture(s)” means the applicable trust indenture pursuant to which PID Bonds are issued.

“Landowner Consent” means a consent by the applicable owner(s) of the Property consenting to the formation of the PID and the levy of Assessments in the form attached hereto as Exhibit E.

“Net Bond Proceeds” means the proceeds of the PID Bonds issued pursuant to Sections 3.02, net of costs of issuance, capitalized interest, reserve funds and other financing costs, that are deposited to the project fund for such bonds.

“Parties” or “Party” means the City and the Developer as parties to this Agreement.

“Payment Certificate” means a Payment Certificate as set forth in Section 9.03, the form of which is attached as Exhibit F.

“Phase” means a phase of development of the Property. The Development will consist of three (3) phases.

“Phase A” means the first phase of development in the PID, consisting of approximately 143 lots, as depicted on Exhibit I.

“Phase A Public Improvement Financing Date” means the date the City approves a bond purchase agreement and sells the first series of PID Bonds for Phase A of the Property, such date to be no later than March 1, 2020 for Phase A, which date may be extended by written agreement of the Developer and the City.

“Phase B” means the second phase of development in the PID, consisting of approximately 110 lots, as depicted on Exhibit I.

“Phase B Public Improvement Financing Date” means the date the City approves a bond purchase agreement and sells the first series of PID Bonds for Phase B of the Property, such date to be no more than three years after the Completion of Construction of the Public Improvements in Phase A.

“Phase C” means the third phase of development in the PID, consisting of approximately 118 lots, as depicted on Exhibit I.

“Phase C Public Improvement Financing Date” means the date the City approves a bond purchase agreement and sells the first series of PID Bonds for Phase C of the Property, such date to be no more than three years after the Completion of Construction of the Public Improvements in Phase B.

“PID Act” means Chapter 372, Texas Local Government Code, as amended.

“PID Bond Proceeds” means the proceeds of the PID Bonds, net of costs of issuance, capitalized interest, reserve funds and other financing costs, that are deposited to the Project Fund.

“PID Bonds” means one or more series special assessment revenue bonds issued by the City pursuant to the PID Act for the payment and/or reimbursement of the Public Improvement Project Costs, including bonds issued to fund construction of the Public Improvements, and, if any, issued to reimburse the Developer for a portion of the costs of the Public Improvements, not previously funded with bond proceeds.

“PID” means the Raburn Reserve (PID No. 10) Public Improvement District.

“Plans and Specifications” means the plans and specifications for Public Improvements approved by the City.

Planned Development – I2” means that certain zoning ordinance No. 2019-13 of the City set forth in Exhibit B.

“Private Improvements” means these horizontal improvements described in the Plans and Specifications submitted to the City as part of the zoning process, other than the Public Improvements, being constructed in each Phase to get to a Final Lot Value.

“Project Fund” means the fund by that name created under each Indenture into which PID Bond Proceeds shall be deposited.

“Property” means approximately 103.7 acres of real property located within the City described in Exhibit A.

“Public Improvement Completion Date” means a date that is no later than eighteen (18) months after Commencement of Construction for the Public Improvements funded for such phase by each series of PID Bonds.

“Public Improvement Project Costs” means the estimated cost of the Public Improvements to be constructed to benefit the land within the PID as set forth in Exhibit C, as may be amended pursuant to this Agreement, such costs to be eligible “project costs,” as defined in the PID Act.

“Public Improvements” means public improvements to be developed and constructed or caused to be developed or constructed inside and outside the PID by the Developer to benefit the PID and the Property, which will include improvements described in Exhibit C.

“Reimbursement Agreement(s)” means the agreement(s) between the City and the Developer in which Developer agrees to fund the certain costs of Public Improvements and the City agrees to reimburse the Developer for a portion of such costs of the Public Improvements from the proceeds of Assessments pursuant to the SAP(s) or from future PID Bond proceeds, if any.

“Service and Assessment Plan” or “SAP” means the service and assessment plans drafted pursuant to the PID Act for the PID and any amendments or updates thereto, adopted and approved by the City that identifies and allocates the Assessments on benefitted parcels within the PID and sets forth the method of assessment, the parcels assessed, the amount of the Assessments, the Public Improvements and the method of collection of the Assessment.

“Trustee” means the trustee under the Indenture.

“Waiver of Liens” means a complete, final and unconditional waiver of all liens with respect to the Public Improvements.

ARTICLE II

THE DEVELOPMENT

Section 2.01. Scope of Agreement. This Agreement establishes provisions for the apportionment, levying, and collection of Assessments on the Property within the PID, the construction of the Public Improvements, reimbursement, acquisition, ownership and maintenance of the Public Improvements, and the issuance of PID Bonds for the financing of the Public Improvements benefitting the property within the PID.

Section 2.02. Project Overview – The Development.

(a) The Developer will undertake or cause the undertaking of the design, development, construction, maintenance, management, use and operation of the Development, and will undertake the design, development and construction of the Public Improvements. The Development will consist of the following elements:

- (i) Up to 400 single family homes;
- (ii) 1.5 acre recreational reserve
- (iii) Swimming pool with dressing rooms, playground and picnic facilities

(iv) 5% of the Development to be open space

(b) Subject to the terms and conditions set forth in this Agreement, the Developer shall plan, design, construct, and complete or cause the planning, designing, construction and completion of the Public Improvements to the City's standards and specifications and subject to the City's approval as provided herein and in accordance with City Regulations and Applicable Law.

(c) Upon completion and acceptance by the City, the City shall own and maintain all of the Public Improvements.

ARTICLE III

PUBLIC IMPROVEMENT DISTRICT

Section 3.01. Creation.

The Developer intends to request the creation of the PID that in total, encompasses the Property, by submitting a petition to the City that contain a list of the Public Improvements to be funded or acquired with the PID Bond Proceeds and the estimated or actual costs of such Public Improvements. Such petition shall also allow for the City's levy of Assessments for maintenance purposes and for administration of the PID. Upon receipt and acceptance of such petition, the City has held a public hearing to consider the creation of the PID in accordance with the PID Act. Developer agrees that the City may require at any time a professional services agreement that obligates Developer to fund the costs of the City's professionals relating to the preparation for and issuance of PID Bonds, which amount shall be agreed to by the Parties and considered a cost payable from PID Bond Proceeds. The Developer agrees to enter into any such agreement upon request by the City.

Section 3.02. Issuance of PID Bonds.

(a) Subject to the terms and conditions set forth in this Article III, the City intends to authorize the issuance of PID Bonds in three or more series (each to coincide with the Developer's phased development of the Property) up to an aggregate principal amount of \$15,000,000 to construct, reimburse or acquire the Public Improvements benefitting the Property. The Public Improvements to be constructed and funded in connection with the PID Bonds are detailed in Exhibit C, which may be amended from time to time, and in the Service and Assessment Plan for the PID or any updates thereto. The net proceeds from the sale of each series of PID Bonds (i.e., net of costs and expenses of issuance of each series of PID Bonds and amounts for debt service reserves and capitalized interest) will be used to pay for, reimburse or acquire the Public Improvements. Notwithstanding the foregoing, the issuance of PID Bonds is a discretionary action by the City Council and is further conditioned upon the adequacy of the bond security and the financial ability and obligation of the Developer to pay the Developer Cash Contribution and perform its obligations hereunder.

(b) The Developer shall complete all Public Improvements within each phase in the PID and such Public Improvements shall be completed by the Public Improvement Completion Date.

(c) The issuance of PID Bonds is subject to the discretion of the City Council and each series of PID Bonds shall be issued with the terms deemed appropriate by the City Council at the time of issuance, if at all.

(d) The following conditions must be satisfied prior to the City's consideration of the sale of PID Bonds:

(i) The maximum aggregate par amount of the PID Bonds to be issued by the City shall not exceed \$15,000,000.

(ii) The maximum "tax rate" for the projected annual assessment for each Phase shall be no greater than \$0.96 per \$100 valuation at the time of issuance of each series of PID Bonds; the tax rate limit applies on an aggregate basis for the entire property within each Phase and on an individual assessed parcel basis (including projected average sales price of the homes to be constructed on the lots).

(iii) Minimum value to lien ratio of at least 3:1 for each series of PID Bonds; such value shall be confirmed by an Appraisal.

(iv) The Developer or its Affiliates shall own all property within a Phase of the PID prior to the levy of Assessments for such Phase.

(v) The Developer must provide evidence reasonably acceptable to the City of an executed loan document and/or private equity in an amount sufficient to complete the amenities set forth in 2.02(a)(iii) above.

(vi) The Developer shall not be in default under this Agreement.

(c) The City intends to levy Assessments on each Phase prior to the issuance of the first series of PID Bonds for each Phase and to issue two series of PID Bonds for each Phase as set forth in this Agreement (an initial series for construction and an additional series pursuant to Section 8.04), subject to the discretion of the City Council.

Section 3.03. Apportionment and Levy of Assessments.

(a) The City intends to levy Assessments on property located within the PID in accordance herewith and with the Service and Assessment Plans (as such plans are amended supplemented or updated from time to time) and the Assessment Ordinances on or before such time as each series of PID Bonds are issued. The City's apportionment and levy of Assessments shall be made in accordance with the PID Act.

(b) Concurrently with the levy of the Assessments on each Phase, the Developer and its Affiliates shall execute and deliver a Landowner Consent in the form attached as Exhibit E for all land owned or controlled by Developer or its Affiliates, or otherwise evidence consent to the creation of the and the levy of Assessments therein and shall record evidence and notice of the Assessments in the real property records of Harris County. The City shall not levy Assessments on property within the PID without an executed Landowner Consent from each landowner within the PID whose property is being assessed.

Section 3.04. Developer Cash Contribution. At closing on any series of PID Bonds intended to fund construction of Public Improvements that have not already been constructed by the Developer, Developer shall deposit into a designated account with the Trustee under the applicable Indenture a pro-rata amount of the Developer Cash Contribution. If the Public Improvements relating to each series of PID Bonds have already been constructed and the PID Bonds are intended to acquire the Public Improvements, then Developer shall not be required to deposit the Developer Cash Contribution as provided in this paragraph for such series. The amount of the Developer Cash Contribution for each series of PID Bonds shall be equal to the difference between the costs of the Public Improvements and the Net PID Bonds Proceeds available to fund such costs of the Public Improvements related to such series of PID Bonds, as set forth in the SAP.

Section 3.05. Transfer of Property. Other than the sale of the Property to the Developer, notwithstanding anything to the contrary contained herein, no sale of property within a Phase of the PID shall occur prior to the City's levy of Assessments in such Phase of the PID unless the Developer provides the City with an executed consent to the creation of the PID and the levy of Assessments, in a form acceptable to the City with respect to the purchased property. In addition, evidence of any transfer of Property in the PID prior to the levy of Assessments on such property shall be provided to the City prior to the levy of Assessments on such property. The City shall require consent of each of the owners of Assessed Property in the PID to the levy of Assessments on each property and to the creation of the PID prior to Assessments being levied on such owner's property. The Developer understands and acknowledges that evidence of land transfer, the execution of the Landowner Consent, appraisal district certificate and property record recording will be required from each Assessed Property Owner in order to levy the Assessments and issue PID Bonds. The Developer shall provide all necessary documentation to the City with respect to any land transfers.

ARTICLE IV

DEVELOPMENT

Section 4.01. Full Compliance with City Standards.

Development and use of the Property by Developer and its Affiliates, including, without limitation, the construction, installation, maintenance, repair, and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with the then current applicable City Regulations.

Section 4.02. Development Standards and Planned Development - 12. As consideration for the City's obligations under this Agreement and in consideration for the issuance of the PID Bonds, the Developer agrees that its development and use of the Property, including, without limitation, the construction, installation, maintenance, repair and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with the City Regulations and the Planned Development - 12 attached as Exhibit B. Any changes to the Planned Development - 12 attached hereto must be approved by the City. Upon approval by the City of an updated Planned Development - 12, this Agreement shall be deemed amended to include such approved updated Planned Development - 12.

Section 4.03. Property Acquisition. The Parties acknowledge that the Developer is responsible for the acquisition of certain off-site property rights and interests to allow the Public Improvements to be constructed to serve the Property. Developer shall use commercially reasonable efforts to obtain all third-party rights-of-way, consents, or easements, if any, needed to construct the off-site Public Improvements. The Developer shall provide evidence of costs, maps, locations and size of infrastructure to the City and obtain the City's consent prior to such acquisition of third-party rights-of-way, consents, or easements needed to construct the off-site Public Improvements.

Section 4.04. Zoning of Property. The Developer consents and agrees to the zoning of the Property pursuant to the planned development process and that such zoning shall be consistent with the Planned Development - 12 set forth in Exhibit B.

Section 4.05. Conflicts. In the event of any conflict between this Agreement and any City Regulation, the City Regulations and Planned Development – 12 shall control.

Section 4.06. Replat. The Developer may submit a replat for all or any portion of the Property. Any replat shall be in conformance with City Regulations and may require a prepayment of Assessments as set forth in the applicable SAP.

ARTICLE V

DEVELOPMENT CHARGES

Section 5.01. Plat Review Fees. Development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's preliminary and final plat review and approval process according to the fee schedule adopted by the City Council and in effect at the time of platting.

Section 5.02. Plan Review and Permit Fees. Development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's review of plans and specifications and issuance of permits (including building permits) for construction of the Public Improvements according to the fee schedule adopted by the City Council at the time of plan review and permit issuance.

Section 5.03. Inspection Fees. Development of the Property shall be subject to the payment to the City of inspection fees according to the fee schedule adopted by the City Council at the time of inspection.

Section 5.04. Impact Fees. All impact fees associated with the Development shall be paid pursuant to the City Regulations.

ARTICLE VI

DEVELOPMENT SPECIFIC REQUIREMENTS

Section 6.01. Extension of Water Service.

In conjunction with the development of the first phase, and any phase of the Property thereafter developed, the City, at its sole cost (but subject to the payment of any water impact fees as provided in the City Regulations) agrees to have available water supply capacity sufficient to serve the Completed Lots and those lots then under development within the Property. Once fully developed, the City agrees to have available water supply capacity sufficient to serve the full development of the Property as described in Section 2.02(a) hereof.

Section 6.02. Extension of Sanitary Sewer Facilities.

In conjunction with the development of the first phase, and any phase of the Property thereafter developed, the City, at its sole cost (but subject to the payment of any sewer impact fees as provided in the City Regulations), agrees to have available sewer capacity sufficient to serve the Completed Lots and those lots then under development within the Property. Once fully developed, the City agrees to have available sanitary sewer capacity sufficient to serve the full development of the Property as described in Section 2.02(a) hereof.

Section 6.03. Drainage.

On or before the date which is forty-five (45) days prior to completion of the first phase of the Development, the City, at its sole cost (but subject to the payment of any drainage impact fees as provided in the City Regulations) shall extend a box culvert or other means of drainage conveyance ("Box Culvert") for storm water from the perimeter of the Property to M118 ("Detention Pond"). The Box Culvert or other means of drainage conveyance and Detention Pond shall be of sufficient size and capacity to accommodate the storm water outfall from the Property in its fully developed condition as described in Section 2.02(a) hereof.

Section 6.04. Extension of Gas Service.

In conjunction with the development of the first phase, and any phase of the Property thereafter developed, the City, at its sole cost, agrees to have available natural gas capacity to serve the Completed Lots and those lots then under development within the Property. Once fully developed, the City agrees to have available natural gas capacity sufficient to serve the full development of the Property as described in Section 2.02(a).

Section 6.05. Extension of Agg Road (Medical Complex).

The City shall extend Agg Road to the perimeter pursuant to the City Regulations. The City anticipates completion of the road extension within 24 months of the Effective Date of this Agreement. Prior to Commencement of Construction for such extension, the Developer shall dedicate right of way for such extension to the City at no cost.

Section 6.06. Additional Right of Way.

In addition, to the twenty-five (25) feet of right of way to be dedicated by plat along South Persimmon Street, the Developer shall dedicate to the City additional right-of-way in an amount not to exceed twenty (20) feet (or a total of forty-five (45) feet from the existing South Persimmon Street right-of-way/property line), at no cost. The additional dedication will be determined during the design of the future widening of South Persimmon Street. The additional dedication will only

impact the proposed twenty (20) foot buffer and will not impact any of the proposed single-family lots. The City will not require that the rear property line of lots to be any further than forty-five (45) feet from the existing South Persimmon Street right-of-way/property line. The City will ensure that none of the street paving or curb associated with South Persimmon Street is designed or installed any farther than thirty-six (36) feet from the existing eastern edge of the South Persimmon Street right-of-way. This will ensure that no paving or curb is installed any closer than nine (9) feet from the rear property line of the proposed single-family lots.

Section 6.07. Water Loop Completion.

The Developer shall complete the loop for water service for Phase A through Persimmon and such loop shall be completed no later than the Completion of Construction of the Public Improvements in Phase A.

ARTICLE VII

CONSTRUCTION OF THE PUBLIC IMPROVEMENTS

Section 7.01. Designation of Construction Manager, Construction Engineers.

(a) Prior to construction of any Public Improvement, Developer shall make, or cause to be made, application for any necessary permits and approvals required by City and any applicable Governmental Authority to be issued for the construction of the Public Improvements and shall obligate each general contractor, architect, and consultants who work on the Public Improvements to obtain all applicable permits, licenses or approvals as required by Applicable Law. The Developer shall require or cause the design, inspection and supervision of the construction of the Public Improvements to be undertaken in accordance with City Regulations and Applicable Law.

(b) The Developer shall design and construct or cause the design and construction of the Public Improvements, together with and including the acquisition, at its sole costs, of any and all easements or fee simple title to such land necessary to provide for and accommodate the Public Improvements.

(c) Developer shall comply, or shall require its contractors to comply, with all local and state laws and regulations regarding the design and construction of the Public Improvements applicable to similar facilities constructed by City, including, but not limited to, the requirement for payment, performance and two- year maintenance bonds for the Public Improvements.

(d) Upon Completion of Construction of any portion of the Public Improvements, Developer shall provide City with a final cost summary of all Public Improvement Project Costs incurred and paid associated with the construction of that portion of the Public Improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by the "all bills paid" affidavits and lien releases executed by Developer and/or its

contractors with regard to that portion of the Public Improvements. Evidence of payment to the applicable contractors and subcontractors shall be provided prior to the reimbursement of the costs of any portion of the Public Improvements.

(e) Developer agrees to require the contractors and subcontractors which construct the Public Improvements to provide payment, performance and two-year maintenance bonds in forms reasonably satisfactory to the City Attorney. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that the City Attorney has the right to reasonably reject any surety company regardless of such company's authorization to do business in Texas. Evidence of payment and performance bonds shall be delivered to the City prior to Commencement of Construction of any such Public Improvements.

(f) Unless otherwise approved in writing by the City, all Public Improvements shall be constructed and dedicated to the City in accordance with City Regulations and Applicable Law.

(g) The Developer shall dedicate or convey by final plat or separate instrument, without cost to the City and in accordance with the Applicable Law, all property rights necessary for the construction, operation, and maintenance of the road, water, drainage, gas and sewer Public Improvements, at the completion of the Public Improvements and acceptance by the City.

Section 7.02. Construction Agreements. The Construction Agreements shall be let in the name of the Developer. The Developer's engineers shall prepare and provide, or cause the preparation and provision of all contract specifications and necessary related documents. The Developer shall provide all construction documents for the Public Improvements and shall acknowledge that the City has no obligations and liabilities thereunder. The Developer shall include a provision in the construction documents for the Public Improvements that the contractor will indemnify the City and its officers and employees against any costs or liabilities thereunder. The Developer or its designee (Engineer) shall administer the contracts. The Public Improvement Project Costs, which are estimated on Exhibit C, shall be paid proceeds of PID Bonds or the Developer Cash Contribution in accordance with the Bond Indentures, or reimbursed by the Assessments levied pursuant to the terms of a Reimbursement Agreement.

(a) The following requirements apply to Construction Agreements for Public Improvements:

(i) Plans and specifications shall comply with all Applicable Law and City Regulations and all Plans and Specification shall be reviewed and approved by the City prior to the issuance of permits. The City shall have thirty (30) business days from its receipt of the first submittal of the Plans and Specifications to approve or deny the Plans and Specifications or to provide comments to the submitter. If any approved Plans and Specifications are amended or supplemented, the City shall have thirty (30) business days from its receipt of such amended or supplemented Plans and Specifications to approve or deny the Plans and Specification or provide comments back to the submitter. Any written City approval or denial must be based on compliance with applicable City Regulations or other regulatory agencies that have jurisdiction over the Development.

(ii) Each Construction Agreement shall provide that the Contractor is an independent contractor, independent of and not the agent of the City and that the Contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and

(iii) Each Construction Agreement for improvements not yet under construction shall provide that the Contractor shall indemnify the City, its officers and employees for any costs or liabilities thereunder and for the negligent acts or omissions of the Contractor.

(b) City's Role.

The City shall have no responsibility for the cost of planning, design, engineering construction, furnishing/equipping the Public Improvements (before, during or after construction) except to the extent of the reimbursement or funding of the Public Improvements Project Costs as set forth in this Agreement. The Developer will not hold the City responsible for any costs of the Public Improvements other than the reimbursements or fundings described in this Agreement. The City shall have no liability for any claims that may arise out of design or construction of the Public Improvements, and the Developer shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to the Developer, not to the City, for payment of all costs and valid claims associated with construction of the Public Improvements.

Section 7.03. Project Scope Verification.

(a) The Developer will from time to time, as reasonably requested by the City Representative, verify to the City Representative that the Public Improvements are being constructed substantially in accordance with the Plans and Specifications approved by the City. To the extent the City has concerns about such verification that cannot be answered by the Developer, to the City's reasonable satisfaction, the Developer will cause the appropriate architect, engineer or general contractor to consult with the Developer and the City regarding such concerns.

Section 7.04. Joint Cooperation; Access for Planning and Development.

(a) Cooperation and Timely Response. During the planning, design, development and construction of the Public Improvements, the parties agree to cooperate and coordinate with each other, and to assign appropriate, qualified personnel to this project. The City staff will make reasonable efforts to accommodate urgent or emergency requests during construction. In order to facilitate a timely review process, the Developer shall cause the architect, engineer and other design professionals to attend City meetings if requested by the City.

Section 7.05. City Not Responsible.

By performing the functions described in this Article, the City shall not, and shall not be deemed to, assume the obligations or responsibilities of the Developer, whose obligations under this Agreement and under Applicable Law shall not be affected by the City's exercise of the functions described in this Article. The City's review of any Plans and Specifications is solely for the City's own purposes, and the City does not make any representation or warranty concerning the appropriateness of any such Plans and Specifications for any purpose. The City's approval of (or failure to disapprove) any such Plans and Specifications, including the Site Plan, submitted

with such Plans and Specifications and any revisions thereto, shall not render the City liable for same, and the Developer assumes and shall be responsible for any and all claims arising out of or from the use of such Plans and Specifications.

Section 7.06. Construction Standards and Inspection.

The Public Improvements will be installed within the public right-of-way or in easements granted to the City. Such easements may be granted at the time of final platting in the final plat or by separate instrument. The Public Improvements shall be constructed and inspected in accordance with applicable state law, and City Regulations, and all other applicable development requirements, including those imposed by any other governing body or entity with jurisdiction over the Public Improvements, and this Agreement, provided, however, that if there is any conflict, the regulations of the governing body or entity with jurisdiction over the Public Improvement being constructed shall control.

Section 7.07. Public Improvements to be Owned by the City – Title Evidence.

The Developer shall furnish to the City a preliminary title report for land with respect to the Public Improvements, including any related rights-of-way, easements, and open spaces if any, to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City, for review and approval at least 30 calendar days prior to the transfer of title of a Public Improvement to the City. The City Representative 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 property or easement covered by the preliminary title report. In the event the City Representative does not approve the preliminary title report, the City shall not be obligated to accept title to the Public Improvement until the Developer has cured such objections to title to the satisfaction of the City Representative.

Section 7.08. Public Improvement Constructed on City Land or the Property.

If the Public Improvement is on land owned by the City, the City hereby grants to the Developer a temporary easement to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Public Improvement. If the Public Improvement is on land owned by the Developer, the Developer shall dedicate easements by plat or shall execute and deliver to the City such access and maintenance easements as the City may reasonably require in recordable form, and the Developer hereby grants to the City a permanent access and maintenance easement to enter upon such land for purposes related to inspection and maintenance of the Public Improvement. The grant of the permanent easement shall not relieve the Developer of any obligation to grant the City title to property and/or easements related to the Public Improvement as required by this Agreement or as should in the City's reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Public Improvement. The provisions for inspection and acceptance of such Public Improvement otherwise provided herein shall apply.

Section 7.09. Additional Requirements.

In connection with the design and construction of the Public Improvements, the Developer shall take or cause the following entities or persons to take the following actions and to undertake the following responsibilities:

(a) The Developer shall provide to the City electronic copies of the Plans and Specifications for the Public Improvements (including revisions) as such Plans and Specifications are currently in existence and as completed after the date hereof and shall provide the City one complete set of record drawings (in electronic format) for the Public Improvements, in accordance with Applicable Law;

(b) In accordance with the requirements between the Developer and the City with regard to the development and construction of the Public Improvements, the Developer or such person selected by and contracting with the Developer shall provide the City with a copy of the detailed construction schedule outlining the major items of work of each major construction contractor, and any revisions to such schedule;

(c) The Developer shall provide construction documents, including the Plans and Specifications to the City, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas at the time the construction documents are submitted to the City for approval;

(d) The Developer shall provide the City with reasonable advance notice of any regularly-scheduled construction meetings regarding the Public Improvements, and shall permit the City to attend and observe such meetings as the City so chooses in order to monitor the project, and shall provide the City with copies of any construction schedules as are discussed and reviewed at any such regularly-scheduled construction meeting;

(e) The Developer or any general contractor shall comply with, and shall require that its agents and subcontractors comply with, all Applicable Laws regarding the use, removal, storage, transportation, disposal and remediation of hazardous materials;

(f) The Developer or any general contractor shall notify and obtain the City's approval for all field changes that directly result in material changes to the portion of the Plans and Specifications for the Public Improvements that describe the connection of such improvements with City streets, storm sewers and utilities;

(g) Upon notice from the City, the Developer shall or shall cause any general contractor to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the general contractor or its subcontractors to property or facilities of the City during construction of the Public Improvements and to reimburse the City for out-of-pocket costs actually incurred by the City that are directly related to the City's necessary emergency repairs of such damage;

(h) Upon notice from the City, the Developer shall promptly cause the correction of defective work and shall cause such work to be corrected in accordance with the construction contracts for the Public Improvements and with City Regulations;

(i) If the Developer performs any soils, construction and materials testing during construction of the Public Improvements, the Developer shall make available to the City copies of the results of all such tests; and

(j) If any of the foregoing entities or persons shall fail in a material respect to perform any of its obligations described above (or elsewhere under this Agreement), the Developer shall use its good faith efforts to enforce such obligations against such entities or persons, or the Developer may cure any material failure of performance as provided herein; and

(k) The Developer shall provide any other information or documentation or services required by City Regulations; and

(l) The Developer shall allow the City Representative to conduct a reasonable pre-final and final inspection of the Public Improvements. Upon acceptance by the City of the Public Improvements, the City shall become responsible for the maintenance of the Public Improvements and making any bond or warranty claim, if applicable.

Section 7.10. Revisions to Scope and Cost of Public Improvements.

(a) The Public Improvement Project Costs, as set forth in Exhibit C, may be modified or amended from time to time upon the approval of the City Representative, provided that the total cost of the Public Improvements shall not exceed such amounts as set forth in the applicable SAP plus the Developer Cash Contribution. Should the Public Improvements be amended by the City Council in a SAP pursuant to the PID Act, the City Representative shall be authorized to make corresponding changes to the applicable Exhibits attached hereto and shall keep official record of such amendments.

(b) Should the Public Improvement Project Costs exceed the amounts set forth in the SAPs, the Developer must make a Developer Cash Contribution at the time of each PID Bond issuance such that the net proceeds of each series of PID Bonds plus the Developer Cash Contribution, is sufficient to fund the Public Improvement Project Costs for which the PID Bonds are being issued.

Section 7.11. City Police Powers.

The Developer recognizes the authority of the City pursuant to the Texas Constitution together with the City's charter and ordinances to exercise its police powers in accordance with applicable laws to protect the public health, safety, and welfare. The City retains its police powers over the Developer's or its general contractor's construction activities on or at the Property, and the Developer recognizes the City's authority to take appropriate enforcement action in accordance with Applicable Law to provide such protection. No lawful action taken by the City pursuant to these police powers shall subject the City to any liability under this Agreement, including without limitation liability for costs incurred by any general contractor or the Developer, and as between the Developer and the City, any such costs shall be the sole responsibility of the Developer and any of its general contractors and shall not be reimbursable from PID Bond Proceeds.

Section 7.12. Title and Mechanic's Liens.

(a) Title. The Developer agrees that the Public Improvements shall not have a lien or cloud on title upon their dedication to and acceptance by the City.

(i) Mechanic's Liens. Developer shall not create nor allow or permit any liens, encumbrances, or charges of any kind whatsoever against the Public Improvements arising from any work performed by any contractor by or on behalf of the Developer. The Developer shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Public Improvements for work or materials furnished to the Developer in connection with any construction, improvements, renovation, maintenance or repair thereof made by the Developer or any contractor, agent or representative of the Developer. The Developer shall cause any such claim of lien to be fully discharged no later than thirty (30) days after the Developer's receipt of written notice of the filing thereof.

Section 7.13. City Consents.

Any consent or approval by or on behalf of the City required in connection with the design, construction, improvement or replacement of the Public Improvements or otherwise under this Agreement shall not be unreasonably withheld, delayed, or conditioned. Any review associated with any determination to give or withhold any such consent or approval shall be conducted in a timely and expeditious manner with due regard to the cost to the Developer associated with delay.

Section 7.14. Right of the City to Make Inspection.

(a) At any time during the construction of the Public Improvements, the City shall have the right to enter the Property for the purpose of inspection of the progress of construction on the Public Improvements; provided, however, the City Representative shall comply with reasonable restrictions generally applicable to all visitors to the Development that are imposed by the Developer or its General Contractor or subcontractors. The Developer shall pay the City's costs for the retention of a third-party inspector.

(b) Inspection of the construction of all Public Improvements shall be by the City Representative or his/her designee. In accordance with Sections 5.03 and 7.03, the Developer shall pay the inspection fee which may be included as a Public Improvement Project Cost.

(c) City may enter the Property in accordance with customary City procedures and Applicable Law to make any repairs or perform any maintenance of Public Improvements which the City has accepted for maintenance. If, during construction of the Public Improvements, the Developer is in default under this Agreement beyond any applicable cure period or in the event of an emergency which is not being timely addressed, the City may enter the Property to make any repairs to the Public Improvements that have not been accepted for maintenance by the City, of every kind or nature, which the Developer is obligated under this Agreement to repair or maintain but which the Developer has failed to perform after reasonable notice (other than in the case of an emergency in which notice is impossible or impractical). The Developer shall be obligated to reimburse the City the reasonable costs incurred by the City for any such repairs. Nothing

contained in this paragraph shall be deemed to impose on the City any obligation to actually make repairs or alterations on behalf of the Developer.

Section 7.15. Competitive Bidding. The construction of the Public Improvements (which are funded from Assessments) is anticipated to be exempt from competitive bidding pursuant to Texas Local Government Code Section 252.022(a)(9). In the event that the actual costs of the Public Improvement do not meet the parameters for exemption from the competitive bid requirement, then either competitive bidding or alternative delivery method may be utilized by the City as allowed by Applicable Law.

ARTICLE VIII

PAYMENT OF PUBLIC IMPROVEMENTS

Section 8.01. Overall Requirements.

(a) The City shall not be obligated to provide funds for any Public Improvement except from the proceeds of the PID Bonds or from Assessments pursuant to a Reimbursement Agreement. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds available for the payment or reimbursement of the Public Improvement Project Costs or for the payment of the cost to construct or acquire a Public Improvement by the City will be sufficient for the construction or acquisition of all of the Public Improvements. Any costs of the Public Improvements in excess of the available PID Bond Proceeds or Assessments pursuant to a Reimbursement Agreement, shall not be paid or reimbursed by the City. The Developer acknowledges and agrees that any lack of availability of monies in the Project Funds established under the Indentures to pay the costs of the Public Improvements shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for the Public 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 Property is subject.

(b) Upon written acceptance of a Public Improvement, and subject to any applicable maintenance-bond period, the City shall be responsible for all operation and maintenance of such Public Improvement, including all costs thereof and relating thereto.

(c) The City's obligation with respect to the reimbursement or payment of the Public Improvement Project Costs shall be limited to the lower of Actual Costs or the available Net PID Bond Proceeds or Assessment revenues, and shall be payable solely from amounts on deposit in the Project Funds from the sale of the PID Bonds as provided herein and in the Indentures, or Assessments collected for the reimbursement or payment of such costs pursuant to Reimbursement Agreement. The Developer agrees and acknowledges that it is responsible for all costs and all expenses related to the Public Improvements in excess of the available Net PID Bond Proceeds and that the Developer Cash Contribution must be deposited at the time of the issuance of PID Bonds.

(d) The City shall have no responsibility whatsoever to the Developer with respect to the investment of any funds held in the Project Fund by the Trustee under the provisions of the Indenture, including any loss of all or a portion of the principal invested or any penalty for

liquidation of an investment. Any such loss may diminish the amounts available in the Project Fund to pay or reimburse the Public Improvement Project Costs in the PID. The obligation of Developer to pay the Assessments is not in any way dependent on the availability of amounts in the Project Fund to pay for all or any portion of the Public Improvements Project Costs hereunder.

Section 8.02. Remaining Funds after Completion of a Public Improvement.

With respect to the PID, if, upon the Completion of Construction of a Public Improvement (or segment or stage thereof) and payment or reimbursement for such Public Improvement, there are Cost Underruns, any remaining budgeted cost(s) may be available to pay Cost Overruns on any other Public Improvement with the approval of the City Representative and provided that all Public Improvements as set forth in the applicable Service and Assessment Plan are undertaken at least in part. The elimination of a category of Public Improvements in the Service and Assessment Plans will require an amendment to the SAP. Upon completion of the Public Improvements, or segment or stage thereof, any Cost Underrun for any Public Improvement within the PID is available to pay Cost Overruns on any other Public Improvement within the PID, and may be added to the amount approved for payment in any Payment Certificate, as approved by the City Representative.

Section 8.03. Payment Process for Public Improvements.

(a) The City shall authorize payment or reimbursement of the Public Improvement Project Costs from PID Bond Proceeds or from Assessments collected in the PID as set forth in 8.04 below. The Developer shall submit a Payment Certificate to the City (no more frequently than monthly) for Public Improvement Project Costs including a completed segment, section or portion of a Public Improvement, as approved by the City. The form of the Payment Certificate is set forth in Exhibit F, as may be modified by the applicable Indenture or Reimbursement Agreement. The City shall review the sufficiency of each Payment Certificate with respect to compliance with this Agreement, compliance with the Applicable Law, and compliance with the applicable SAP and Plans and Specifications. The City shall review each Payment Certificate within thirty (30) Business Days of receipt thereof and upon approval, certify the Payment Certificate pursuant to the provisions of the applicable Indenture or Reimbursement Agreement, and payment shall be made to the Developer or its designee pursuant to the terms of the applicable Indenture or Reimbursement Agreement, provided that funds are available under the applicable Indenture or Reimbursement Agreement. Notwithstanding the foregoing, the City shall review the first Payment Certificate within forty-five (45) business days of receipt thereof. If a Payment Certificate is approved only in part, the City shall specify the extent to which the Payment Certificate is approved and payment for such partially approved Payment Certificate shall be made to the Developer pursuant to the terms of the applicable Indenture or Reimbursement Agreement, provided that funds are available under the applicable Indenture or Reimbursement Agreement.

(b) If the City requires additional documentation, timely disapproves or questions the correctness or authenticity of the Payment Certificate, the City shall deliver a detailed notice to the Developer within fifteen (15) Business Days of receipt thereof, then payment with respect to disputed portion(s) of the Payment Certificate shall not be made until the Developer and the City have jointly settled such dispute or additional information has been provided to the City's reasonable satisfaction.

(c) The City shall reimburse the Public Improvement Project Costs as set forth in Exhibit C and the SAP, from funds available pursuant to the applicable Indenture or Reimbursement Agreement.

(d) Reimbursement to the Developer and the City for administrative costs relating to the creation of the PID, the levy of assessments and issuance of the PID Bonds may be distributed at closing of the applicable series of PID Bonds pursuant to a Closing Disbursement Request, in the form attached as Exhibit G.

Section 8.04. Public Improvements Reimbursement from Assessment Fund In the Event of a Non-Issuance of PID Bonds.

(a) In the event that, (i) the City does not issue PID Bonds by the Public Improvement Financing Date, or (ii) PID Bonds cannot be issued for the full costs of the Public Improvements of a result of the parameters set forth in Section 3.02(d), the reimbursement for costs of the Public Improvements set forth in Exhibit C and in the Service and Assessments Plan that are not paid with PID Bond Proceeds shall be made on an annual basis from Assessments levied by the City for the Public Improvements pursuant to Chapter 372, Texas Local Government Code, as amended, unless the Public Improvement Financing Date has been extended by written agreement between the Developer and the City and approved by City Council. Such reimbursement shall be made pursuant to the terms and provisions of one or more Reimbursement Agreements. Such Reimbursement Agreement shall set forth the terms of the annual reimbursement for the costs of the Public Improvements. If the City does not issue additional PID Bonds to fund subsequent Public Improvement Project Costs that have not been previously funded by PID Bonds, such unfunded costs may be funded from Assessments pursuant to additional Reimbursement Agreements. These Reimbursement Agreement obligations may be reimbursed through the issuance of PID Bonds by the City once the parameters set forth in Section 3.02(d) can be met. The issuance of any PID Bonds to fund obligations under a Reimbursement Agreement is subject to the City's discretion and shall be determined by the City. In any event, the issuance of PID Bonds to Fund any obligations under a Reimbursement Agreement, if the City determines to issue such PID Bonds, shall occur no later than three (3) years after the Phase C Public Improvement Financing Date.

(b) Reimbursement or payment of the costs of the Public Improvements shall only be made from the levy of Assessments within the PID as set forth herein.

(c) The term, manner and place of payment or reimbursement to the Developer under this Section shall be set forth in the Reimbursement Agreement.

(d) Reimbursement or payment shall be made only for the costs of the Public Improvements as set forth in this Agreement, the Service and Assessment Plan or in the Reimbursement Agreement, as approved by the City. Any additional public improvements other than the Public Improvements constructed by the Developer and dedicated to the City, shall not be subject to payment or reimbursement under the terms of this Agreement.

Section 8.05. Rights to Audit.

(a) The City shall have the right to audit, upon reasonable notice and at the City's own expense, records of the Developer with respect to the expenditure of funds to pay Public Improvement Project Costs. Upon written request by the City, the Developer shall give the City or its agent, access to those certain records controlled by, or in the direct or indirect possession of, the Developer (other than records subject to legitimate claims of attorney-client privilege) with respect to the expenditure of Public Improvement Project Costs, and permit the City to review such records in connection with conducting a reasonable audit of such fund and account. The Developer shall make these records available to the City electronically or at a location that is reasonably convenient for City staff.

(b) The City and the Developer shall reasonably cooperate with the assigned independent auditors (internal or external) in this regard, and shall retain and maintain all such records for at least 2 years from the date of Completion of Construction of the Public Improvements. All audits must be diligently conducted and once begun, no records pertaining to such audit shall be destroyed until such audit is completed.

ARTICLE IX

REPRESENTATIONS AND WARRANTIES

Section 9.01. Representations and Warranties of City.

The City makes the following representation and warranty for the benefit of the Developer:

(a) Due Authority; No Conflict. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act). The City has all requisite power and authority to execute this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute legal, valid and binding obligations enforceable against the City in accordance with the terms subject to principles of governmental immunity and the enforcement of equitable rights. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the City is a Party, or by which the City is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(b) Due Authority; No Litigation. No litigation is pending or, to the knowledge of the City, threatened in any court to restrain or enjoin the construction of or the Public Improvements or the City's payment and reimbursement obligations under this Agreement, or otherwise contesting the powers of the City or the authorization of this Agreement or any agreements contemplated herein.

Section 9.02. Representations and Warranties of Developer.

The Developer makes the following representations, warranties and covenants for the benefit of the City:

(a) Due Organization and Ownership. The Developer is a Texas [limited liability company] validly existing under the laws of the State of Texas and is duly qualified to do business in the State of Texas; and that the person executing this Agreement on behalf of it is authorized to enter into this Agreement.

(b) Due Authority: No Conflict. The Developer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Developer and constitute the Developer's legal, valid and binding obligations enforceable against the Developer in accordance with their terms. The consummation by the Developer of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Developer, or any of the terms of any agreement or instrument to which the Developer is a Party, or by which the Developer is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(c) Consents. No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of the Developer in connection with the execution and delivery of this Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.

(d) Litigation/Proceedings. To the best knowledge of the Developer, after reasonable inquiry, there are no pending or, to the best knowledge of the Developer, threatened, judicial, municipal or administrative proceedings, consent decree or judgments which might affect the Developer's ability to consummate the transaction contemplated hereby, nor is there a preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and there is no statute, rule, regulation, or executive order promulgated or enacted by a governmental entity, that is in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement.

(e) Legal Proceedings. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, any of the principals of the Developer and any key person or their respective Affiliates and representatives which the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of the Developer under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

(f) Ownership. The Developer represents that it or one or more Affiliates will be the sole owners of the Property within the PID at the time of their creation and will be the sole owners at the time of the levy of Assessments. The Developer shall consent to the levy of Assessments in substantially the form of the Landowner Consent attached hereto as Exhibit E, and shall not transfer title of any land within the PID prior to the levy of all Assessments within each PID.

ARTICLE X

MAINTENANCE OF LANDSCAPE IMPROVEMENTS

Section 10.01. Mandatory Property Owners' Association.

(a) The Developer will create a mandatory homeowners' association ("HOA") over the portion of the Property then being developed as single family homes ("the "Single Family Property"), which HOA, through its conditions and restrictions filed of record in the property records of Harris County, shall be required to assess and collect from owners annual fees in an amount calculated to maintain the open spaces, common areas, right-of-way irrigation systems, raised medians and other right-of-way landscaping, detention areas, drainage areas, screening walls, trails, lawns, landscaped entrances to the Single Family Property and any other common improvements or appurtenances (the "HOA Maintained Improvements").

(b) While the Parties anticipate that the HOA established to maintain and operate the HOA Maintained Improvements, will adequately perform such duties, in the event that the City determines that the HOA is not adequately performing the duties for which it was created, which non-performance shall be evidenced by violations of applicable deed restrictions and/or applicable City ordinances, the City reserves the right to levy an assessment each year equal to the actual costs of operating and maintaining the HOA Maintained Improvements that are owned by the City. The City agrees that it will not levy such assessments without first giving the HOA written notice of the deficiencies and providing the HOA with sixty (60) days in which to cure the deficiencies.

(c) Covenants, conditions and restrictions for the HOA must be filed before more than ten percent (10%) of the first series of PID Bond Proceeds may be released from the applicable Project Fund pursuant to a Certificate for Payment.

ARTICLE XI

TERMINATION EVENTS

Section 11.01. Developer Termination Events.

The Developer may terminate this Agreement as to a phase of Development if the City does not either (i) sell PID Bonds by the Public Improvement Financing Date (i.e., the Phase A Public Improvement Financing Date, the Phase B Public Improvement Financing Date and the Phase C Public Improvement Financing Date) or (ii) levy Assessments and enter into a Reimbursement Agreement pursuant to Section 8.04 for such phase of the Development.

Section 11.02. City Termination Events.

(a) The City may terminate this Agreement for each Phase if the City determines both (i) not to issue a series of PID Bonds for such phase of Development to fund the construction of the Public Improvements, and (ii) not to levy Assessments and enter into a Reimbursement Agreement for such phase of the Development.

(b) The City may terminate this Agreement and any Reimbursement Agreement, upon an Event of Default by the Developer pursuant to Article XIV herein.

(c) The City may terminate this Agreement and any Reimbursement Agreement, if Commencement of Construction of the private horizontal improvements within the Development has not occurred within three years of the Effective Date.

(d) The City may terminate this Agreement if the Developer does not pay the Developer Cash Contribution at closing of the applicable series of PID Bonds.

(e) The City may terminate this Agreement if the Developer has not purchased the Property prior to the levy of Assessments in Phase A.

Section 11.03. Termination Procedure.

If either Party determines that it wishes to terminate this Agreement pursuant to this Article, such Party must deliver a written notice to the other Party specifying in reasonable detail the basis for such termination and electing to terminate this Agreement. Upon such a termination, the Parties hereto shall have no duty or obligation one to the other under this Agreement, including the reimbursement of any of Developer's costs that were previously advanced or incurred. Provided, however, that as of the date of termination, (i) any Public Improvements completed and accepted by the City or (ii) Public Improvement Project Costs submitted pursuant to a Payment Certificate and approved by the City, shall still be subject to reimbursement.

Section 11.04. City Actions Upon Termination.

In the event of termination of this Agreement, the City may (i) use any remaining PID Bond Proceeds to redeem PID Bonds pursuant to the provisions of the Indenture or (ii) construct or cause to be constructed the remaining Public Improvements, payable from PID Bond Proceeds. Upon termination the Developer shall have no claim or right to any further payments for Public Improvements Project Costs pursuant to this except that, (i) any Public Improvements completed and accepted by the City or (ii) Public Improvement Project Costs submitted pursuant to a Payment Certificate and approved by the City shall still be subject to reimbursement.

ARTICLE XII

TERM

This Agreement shall terminate upon the earlier of: (i) the expiration of 30 years from the Effective Date, (ii) the date on which the City and the Developer discharge all of their obligations hereunder, including (a) The Public Improvements have been completed and the City has accepted

all of the Public Improvements and (b) all PID Bond Proceeds have been expended for the construction of all of the Public Improvements and the Developer has been reimbursed for all completed and accepted Public Improvements (iii) an event of default under Article XIII, or (iv) the occurrence of a termination event under Article XI.

ARTICLE XIII

DEFAULT AND REMEDIES

Section 13.01. Developer Default.

Each of the following events shall be an "Event of Default" by the Developer under this Agreement:

(a) 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) calendar 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. The Developer shall fail in any material respect to maintain any of the insurance or bonds required by this Agreement; provided, however, that if a contractor fails to maintain any of the insurance or bonds required by this Agreement, the Developer shall have thirty (30) calendar days to cure.

(b) 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) calendar days after written notice thereof is given by the City to the Developer;

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

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

(e) 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;

(f) 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) calendar days after written notice by the City; OR

(g) Any representation or warranty confirmed or made in this Agreement by the Developer was untrue in any material respect as of the Effective Date.

Section 13.02. Notice and Cure Period.

(a) Before any Event of Default under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such Event of Default shall notify, in writing, the Party alleged to have failed to perform the alleged Event of Default and shall demand performance (with the exception of 13.01(f) above). Except with respect to cure periods set forth in 13.01 above, which shall be controlling, no breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) calendar days of the receipt of such notice (or thirty (30) calendar days in the case of a monetary default), with completion of performance within ninety (90) calendar days subject.

(b) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed by Force Majeure, the time for such performance shall be extended by the amount of time of the delay directly caused by and relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing Force Majeure events shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event and the length of the Force Majeure event is reasonably expected to last not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a Force Majeure event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article. The number of days a Force Majeure event is in effect shall be determined by the City based upon commercially reasonable standards.

Section 13.03. City's Remedies.

With respect to the occurrence of an Event of Default the City may pursue the following remedies:

(a) The City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, 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, damages, 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.

(b) 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.

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

Section 13.04. City Default.

Each of the following events shall be an Event of Default by the City under this Agreement:

(a) So long as the Developer has complied with the terms and provisions of this Agreement, the City shall fail to pay to the Developer any monetary sum hereby required of it and shall not cure such default within thirty (30) calendar days after the later of the date on which written notice thereof is given to the City by the Developer.

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

Section 13.05. Developer's Remedies.

(a) Upon the occurrence of any Event of Default by the City, the Developer may pursue any legal remedy or remedies specifically including damages as set forth below (specifically excluding specific performance and other equitable remedies), and termination of this Agreement; provided, however, that the Developer shall have no right to terminate this Agreement unless the Developer delivers to the City a second notice which expressly provides that the Developer will terminate within thirty (30) days if the default is not addressed as herein provided.

(b) No remedy herein conferred or reserved is intended to be inclusive 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.

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

Section 13.06. Limited Waiver of Immunity.

(a) The City and the Developer hereby acknowledge and agree that to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended, and the City's immunity from suit is waived only as set forth in such statute.

(b) Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

(i) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Agreement or any Reimbursement Agreement and is payable solely from Assessment revenues;

(ii) The recovery of damages against City or the Developer may not include consequential damages or exemplary damages;

(iii) The Parties may not recover attorney's fees; and

(iv) The Parties are not entitled to specific performance or injunctive relief against the City.

Section 13.07. Limitation on Damages.

In no event shall any Party have any liability under this Agreement for any exemplary or consequential damages.

Section 13.08. Waiver.

Forbearance by the non-defaulting Party to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default by the other Party shall not be deemed or construed to constitute a waiver of such default. One or more waivers of a breach of any covenant, term or condition of this Agreement by either Party hereto shall not be construed by the other Party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either Party to or of any act by the other Party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any other subsequent similar act.

ARTICLE XIV

INSURANCE, INDEMNIFICATION AND RELEASE

Section 14.01. Insurance.

With no intent to limit any contractor's liability or obligation for indemnification, the Developer shall maintain or cause to be maintained, by the persons constructing the Public Improvements, certain insurance, as provided below in full force and effect at all times during construction of the Public Improvements and shall require that the City is named as an additional insured under such contractor's insurance policies.

(a) With regard to the obligations of this Agreement, the Developer shall obtain and maintain in full force and effect at its expense, or shall cause each contractor to obtain and maintain at their expense, the following policies of insurance and coverage:

(i) Commercial general liability insurance insuring the City, contractor and the Developer against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the activities of Developer, the contractor, the City and their respective officers, directors, agents, contractors, or employees, in the amount of \$500,000 Per Occurrence or a limit equal to the amount of the contract amount, \$2,000,000 General Aggregate Bodily Injury and Property Damage. The contractor may procure and maintain a Master or Controlled Insurance policy to satisfy the requirements of this section,

which may cover other property or locations of the contractor and its affiliates, so long as the coverage required in this section is separate;

(ii) Worker's Compensation insurance as required by law;

(iii) Business automobile insurance covering all operations of the contractor pursuant to the Construction Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability.

(iv) To the extent available, each policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City;

(v) Each policy of insurance with the exception of Worker's Compensation and professional liability shall be endorsed to include the City (including its former, current, and future officers, directors, agents, and employees) as additional insureds;

(vi) Each policy, with the exception of Worker's Compensation and professional liability, shall be endorsed to provide the City sixty (60) days' written notice prior to any cancellation, termination or material change of coverage; and

(vii) The Developer shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage before the Commencement of Construction of the Public Improvements and within 10 days before expiration of coverage, or as soon as practicable, deliver renewal policies or certificates of insurance evidencing renewal and payment of premium. On every date of renewal of the required insurance policies, the contractor shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition the contractor shall within ten (10) business days after written request provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies).

Section 14.02. Waiver of Subrogation Rights.

The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability Insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City.

Section 14.03. Additional Insured Status.

With the exception of Worker's Compensation Insurance and any Professional Liability Insurance, all insurance required pursuant to this Agreement shall include and name the City as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City under Texas law including products/completed operations.

Section 14.04. Certificates of Insurance.

Certificates of Insurance and policy endorsements in a form satisfactory to City shall be delivered to City prior to the commencement of any work or services on the Public Improvements. All required policies shall be endorsed to provide the City with sixty (60) days advance notice of cancellation or non-renewal of coverage. The Developer shall provide sixty (60) days written notice of any cancellation, non-renewal or material change in coverage for any of the required insurance in this Article.

On every date of renewal of the required insurance policies, the Developer shall cause (and cause its contractors) to provide a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Developer shall, within ten (10) business days after written request, provide the City with certificates of insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the certificates of insurance and the policy endorsements (including copies of such insurance policies) to the City is a condition precedent to the payment of any amounts to the Developer by the City.

Section 14.05. Carriers.

All policies of insurance required to be obtained by the Developer and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by the Developer's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

Section 14.06. INDEMNIFICATION.

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL

NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

DEVELOPER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND DEVELOPER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

ARTICLE XV

GENERAL PROVISIONS

Section 15.01. Notices.

Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by facsimile or other electronic transmittal, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as may be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

To the City:	City Manager 401 Market Street Tomball, TX 77375
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With a copy to: Attn: City Attorney
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, TX 77019

To the Developer: Attn: Brian Stidham
Hines Acquisitions LLC
609 Main Street, Suite 2400
Houston, Texas 77002

With a copy to: c/o HT Raburn Reserve Development L.P.
Attn: Corporate Counsel
609 Main Street, Suite 2400
Houston, Texas 77002

Section 15.02. Make-Whole Provision. If the issuance of the PID Bonds in any calendar year precludes the City from issuing bank qualified debt for that calendar year, then the Developer shall pay to the City a fee (the "PID Bond Fee") to compensate the City for the interest savings the City would have achieved had the debt issued by the City been bank qualified. The City's financial advisor shall calculate the PID Bond Fee based on the planned debt issuances for the City in the year in which each series of PID Bonds are issued, and shall notify the Developer of the total amount due prior to the issuance of the applicable series of PID Bonds. The Developer agrees to pay the PID Bond Fee to the City within ten (10) business days after receiving notice from the City of the amount of PID Bond Fee due to the City. The PID Bond Fee shall be held in a segregated account of the City and if the total amount of debt obligations sold or entered into by the City in the calendar year in which the applicable series of PID Bonds are issued are less than the bank qualification limits (currently \$10 million per calendar year), then the PID Bond Fee shall be returned to the Developer. If, at the time of the City's notification to the Developer as set forth above, there are additional bonds to be issued by the City in that year that will be issued to accommodate additional developers within the City, the PID Bond Fee shall be shared by all parties in a pro-rata amount based upon the estimated par amounts of each series of bonds issued for the benefit of each, as determined by the City and its financial advisor.

Section 15.03. Assignment.

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. The obligations, requirements or covenants to develop the Property, including construction of the Public Improvements may be assigned to an Affiliate without the prior written consent of the City. The obligations, requirements or covenants to the development of the Property, including construction of the Public Improvements shall not be assigned to any non-Affiliate without the prior written consent of the City Council, which consent shall not be unreasonably withheld if the assignee demonstrates the financial ability to perform in the reasonable judgment of the City Council. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title or interests being assigned. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment unless the

City approves the release in writing. Developer shall maintain written records of all assignments made by Developer to Assignee, including a copy of each executed assignment and the Assignee's notice information as required by this Agreement, and, upon written request from the City, any Party or Assignee, shall provide a copy of such records to the requesting person or entity, and this obligation shall survive the assigning Party's sale, assignment, transfer or other conveyance of any interest in this Agreement or the Property.

(b) Developer may assign any receivables or revenues due pursuant to this Agreement or any Reimbursement Agreement to a third party without the consent of, but upon written notice to the City. Provided, however, that notwithstanding the above, the City shall not be required to make partial payments to more than two parties as a result of an assignment.

(c) The Developer and assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of (a) their respective lenders without the consent of, but with prompt written notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including Notice information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement within thirty (30) days written Notice to the lender, not to be unreasonably withheld. A lender is not a party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial. Any purchaser from or successor owner through a lender of any portion of the Property shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured.

(d) The City shall not be required to acknowledge the receipt of any Assignment by the Developer; however, to the extent the City does acknowledge receipt of any assignment pursuant to this Section, such acknowledgment does not evidence the City's agreement, acceptance or acknowledgment of the content of the assignment documents or any rights accruing thereunder; it is solely an acknowledgment of receipt of the notice via mail, express mail or email.

(e) The City does not and shall not consent to nor participate in any third-party financing based upon the Developer's assignment of its right to receive funds pursuant to this Agreement or any Reimbursement Agreement.

Section 15.04. Table of Contents; Titles and Headings.

The titles of the articles, and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 15.05. Entire Agreement; Amendment.

This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement. This Agreement may only be amended by a written agreement executed by all Parties.

Section 15.06. Time.

In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays, and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday, or legal holiday.

Section 15.07. Counterparts.

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 15.08. Severability; Waiver.

If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Any failure by a Party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 15.09. No Third-Party Beneficiaries.

The City and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third party beneficiary, or any individual or entity other than the City, the Developer or assignees of such Parties.

Section 15.10. Notice of Assignment. Developer shall not transfer any portion of the Property prior to the levy of Assessments, except as provided in Section 3.05. Subject to Section 15.03 herein, the requirements set forth below shall apply in the event that the Developer sells, assigns, transfers or otherwise conveys the Property or any part thereof and/or any of its rights, benefits or obligations under this Agreement. Developer must provide the following:

- (a) within 30 days after the effective date of any such sale, assignment, transfer, or other conveyance, the Developer must provide written notice of same to the City;

- (b) the Notice must describe the extent to which any rights or benefits under this Agreement have been sold, assigned, transferred, or otherwise conveyed;
- (c) the Notice must state the name, mailing address, and telephone contact information of the person(s) acquiring any rights or benefits as a result of any such sale, assignment, transfer, or other conveyance;
- (d) the Notice must be signed by a duly authorized person representing the Developer and a duly authorized representative of the person that will acquire any rights or benefits as a result of the sale, assignment transfer or other conveyance.

Section 15.11. No Joint Venture.

Nothing contained in this Agreement or any other agreement between the Developer and the City is intended by the Parties to create a partnership or joint venture between the Developer, on the one hand, and the City on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

Section 15.12. Estoppel Certificates. From time to time within fifteen (15) business days of a written request of the Developer or any future Developer, and upon the payment of a \$100.00 fee to the City, the City Manager, or his/her designee is authorized, in his official capacity and to his reasonable knowledge and belief, to execute a written estoppel certificate in form approved by the City Attorney, identifying any obligations of a Developer under this Agreement that are in default. No other representations in the Estoppel shall be made by the City.

Section 15.13. Independence of Action.

It is understood and agreed by and among the Parties that in the design, construction and development of the Public Improvements and any of the related improvements described herein, and in the Parties' satisfaction of the terms and conditions of this Agreement, that each Party is acting independently, and the City assumes no responsibility or liability to any third parties in connection to the Developer's obligations hereunder.

Section 15.14. Limited Recourse.

No officer, director, employee, agent, attorney or representative of the Developer shall be deemed to be a Party to this Agreement or shall be liable for any of the contractual obligations created hereunder. No elected official of the City and no agent, attorney or representative of the City shall be deemed to be a Party to this Agreement or shall be liable for any of the contractual obligations created hereunder.

Section 15.15. Exhibits.

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 15.16. Survival of Covenants.

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

Section 15.17. No Acceleration.

All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

Section 15.18. Conditions Precedent.

This Agreement is expressly subject to, and the obligations of the Parties are conditioned upon the City levy of the Assessments and the issuance of the PID Bonds or approval of a Reimbursement Agreement.

Section 15.19. No Reduction of Assessments.

Following the issuance of each series of PID Bonds, the Developer agrees not to take any action or actions to reduce the total amount of the Assessments levied in payment of such PID Bonds. The Developer agrees not to take any action or actions to reduce the total amount of such Assessments to be levied as of the effective date of this Agreement.

Section 15.20. Anti-Boycott Verification.

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 Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, 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.

Section 15.21. Iran, Sudan and Foreign Terrorist Organizations

The Developer 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.

Section 15.22. Governing Law.

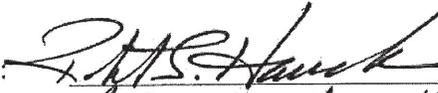
The Agreement shall be governed by the laws of the State of Texas without regard to any choice of law rules; and venue for any action concerning this Agreement and the Reimbursement Agreement shall be in the State District Court of Harris County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 15.23. Conflict.

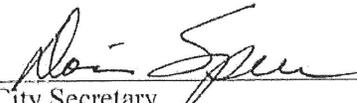
In the event of any conflict between this Agreement and any Indenture authorizing the PID Bond, the Indenture controls. In the event of any conflict between this Agreement and the Reimbursement Agreement, the Reimbursement Agreement shall control, except that in all cases, Applicable Law shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF TOMBALL

By: 
Name: ROBERT S. HAUCK
Title: City Manager

ATTEST:


City Secretary

[SIGNATURES CONTINUE ON NEXT PAGE]

HT RABURN RESERVE DEVELOPMENT LP

By: HT Raburn Reserve Development LLC, its general partner

By: HT Raburn Reserve LP, its sole member

By: Hines Raburn Reserve LLC, its general partner

By: Hines Raburn Reserve Associates LP, its sole member

By: Hines Investment Management Holdings Limited Partnership,
its general partner

By: HIMH GP LLC, its general partner

By: Hines Real Estate Holdings Limited
Partnership, its sole member

By: JCH Investments, Inc.,
its general partner

By:

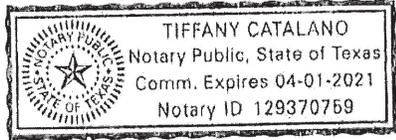


Name: Adil Noorani
~~Senior Managing Director~~

Title: _____

STATE OF TEXAS
HARRIS COUNTY

This instrument was acknowledged before me on the 20 day of October, 2019 by Adil NADAVI Senior Managing Director of JCH Investments, Inc., general partner of Hines Real Estate Holdings Limited Partnership, sole member of HIMH GP, LLC, general partner of Hines Investment Management Holdings Limited Partnership, general partner of Hines Raburn Reserve Associates L.P., sole member of Hines Raburn Reserve, LLC, general partner of HT Raburn Reserve, LP, sole member of HT Raburn Reserve Development, LLC, general partner of HT Raburn Reserve Development, L.P., on behalf of such limited partnership.





Notary Public, State of Texas

EXHIBIT A

PROPERTY DESCRIPTION DEPICTION

**DESCRIPTION
TRACT 1**

39.4982 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, City of Tomball, Harris County, Texas, being those certain Outlots 355, 356, 358, 359, 361, 362, 363 and 364 of the Corrected Map of Tomball Outlots, a subdivision as shown on map or plat recorded under Volume 4, Page 75 of the Map Records of Harris County, Texas, said 39.4982 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a PK Nail set in the Easterly right-of-way line of South Perrinmon Road (30 foot right-of-way), for the Northwestern corner of that certain Outlot 366 of said Corrected Map of Tomball Outlots and the Southwesterly corner of said Outlot 363;

Thence, N 02°26'40" W, along the Easterly right-of-way line of said South Perrinmon Road, a distance of 1,480.41 feet to a PK Nail set at the intersection with the Southerly right-of-way line of Sutton Lane (30 foot Unimproved right-of-way) as shown on said Corrected Map of Tomball Outlots, for the Northwestern corner of said Outlot 355;

Thence, N 87°44'47" E, along the Southerly right-of-way line of said Sutton Lane, a distance of 1,160.10 feet to a 5/8 inch iron rod with cap set at the intersection with the Westerly right-of-way line of a 30 foot Unimproved right-of-way as shown on said Corrected Map of Tomball Outlots, for the Northeastery corner of said Outlot 356;

Thence, S 02°32'22" E, along the Westerly right-of-way line of said 30 foot Unimproved right-of-way, a distance of 1,482.67 feet to a 5/8 inch iron rod with cap set for the Southeastery corner of said Outlot 364 and the Northeastery corner of that certain Outlot 367 of said Corrected Map of Tomball Outlots, from which a found 1/2 inch iron pipe bears N 87°51'27" E, 30.70 feet;

Thence, S 87°51'27" W, along the Northerly line of said Outlot 366 and 367, a distance of 1,162.57 feet to the POINT OF BEGINNING and containing 39.4982 acres of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983 (SOUTH CENTRAL ZONE NO. 4204).

TRACT BEING SHOWN ON MAP (SEE HSC 03137-E)

**HOVIS SURVEYING COMPANY, INC.
TEXAS FIRM REGISTRATION NO. 10030400**

By: 



Date: November 4, 2018
Job No: 18-102-00
Dwg No: HSC 03137-E
File No: A18-102.00D
Dwg. File: 1810200.dwg

SWIG P1D Position
#0004568.1
015363.0000044852-8538-6909.v2

DESCRIPTION
TRACT 2

Exhibit "A"

4.9530 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, City of Tomball, Harris County, Texas, being that certain Outlot 365 of the Corrected Map of Tomball Outlots, a subdivision as shown on map or plat recorded under Volume 4, Page 75 of the Map Records of Harris County, Texas, said 4.9530 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found in the Easterly right-of-way line of a 30 foot Unimproved right-of-way as shown on said Corrected Map of Tomball Outlots, for the Northwesterly corner of that certain called 10.27 acres of land described in deed and recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number G259047, the Southwesterly corner of said Outlot 365 and the Northwesterly corner of that certain Outlot 368 of said Corrected Map of Tomball Outlots;

Thence, N 02°32'22" W, along the Easterly right-of-way line of said 30 foot Unimproved right-of-way, a distance of 396.79 feet to a 5/8 inch iron rod with cap found for the Southwesterly corner of that certain Reserve "B" of the Final Plat of Calvary Baptist of Tomball Subdivision, a subdivision as shown on map or plat recorded under Film Code Number 520133 of the Map Records of Harris County, Texas and the Northwesterly corner of said Outlot 365;

Thence, N 87°15'10" E, along the Southerly line of said Reserve "B", a distance of 542.96 feet to a 5/8 inch iron rod with cap found for the Northwesterly corner of that certain Reserve "C" of said Final Plat of Calvary Baptist of Tomball Subdivision and the Northeastern corner of said Outlot 365;

Thence, S 02°32'04" E, along the Westerly line of said Reserve "C", a distance of 397.96 feet to a 1/2 inch iron rod found for the most Northerly Northeast corner of said 10.27 acre tract and the Northeastern corner of said Outlot 368;

Thence, S 87°22'37" W, along the Northerly line of said 10.27 acre tract and the Northerly line of said Outlot 368, a distance of 542.93 feet to the POINT OF BEGINNING and containing 4.9530 acres of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983 (SOUTH CENTRAL ZONE NO. 4204).

TRACT BEING SHOWN ON MAP (SEE HSC 03137-E)

HOVIS SURVEYING COMPANY, INC.
TEXAS FIRM REGISTRATION NO. 10030400



By: _____

Date: November 4, 2018
Job No: 18-102-00
Dwg No: HSC 03137-E
File No: B18-102.00D
Dwg. File: 1810200.dwg

SWIG PLD Petition
#6004568.1
015363.00000-114852-8538-6909.v2

DESCRIPTION
TRACT 3

4.1376 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, City of Tomball, Harris County, Texas, being a portion of that certain Outlot 354 of the Corrected Map of Tomball Outlots, a subdivision as shown on map or plat recorded under Volume 4, Page 75 of the Map Records of Harris County, Texas, said 4.1376 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found in the Easterly right-of-way line of a 30 foot Unimproved right-of-way as shown on said Corrected Map of Tomball Outlots, for the Southwesterly corner of that certain Tract C of Truss Houston, Inc., a subdivision as shown on map or plat recorded under Volume 335, Page 107 of the Map Records of Harris County, Texas and the Northwesterly corner of said Outlot 354, from which a found 1/2 inch iron rod bears S 87°47'53" W, 0.72 feet;

Thence, N 87°47'53" E, along the Southerly line of said Tract C, a distance of 478.88 feet to a 5/8 inch iron rod with cap found in the Westerly right-of-way line of Huffsmith Kohrville Road (right-of-way width varies);

Thence, S 02°08'45" E, along the Westerly right-of-way line of said Huffsmith Kohrville Road, a distance of 375.13 feet to a 1 inch iron rod found at the intersection with the Northerly right-of-way line of Sutton Lane (30 foot Unimproved right-of-way) as shown on said Corrected Map of Tomball Outlots, from which a found 5/8 inch iron rod with cap bears N 61°10'47" W, 0.87 feet;

Thence, S 87°15'14" W, along the Northerly right-of-way line of said Sutton Lane, a distance of 476.29 feet to a 5/8 inch iron rod with cap set at the intersection with the Easterly right-of-way line of said 30 foot Unimproved right-of-way, for the Southwesterly corner of said Outlot 354, from which a found 1/2 inch iron rod bears N 87°15'14" E, 1.33 feet;

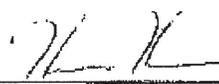
Thence, N 02°32'22" W, along the Easterly right-of-way line of said 30 foot Unimproved right-of-way, a distance of 379.66 feet to the POINT OF BEGINNING and containing 4.1376 acres of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983 (SOUTH CENTRAL ZONE NO. 4204).

TRACT BEING SHOWN ON MAP (SEE HSC 03137-E)

HOVIS SURVEYING COMPANY, INC.
TEXAS FIRM REGISTRATION NO. 10030400

By: _____



Date: November 4, 2018
Job No: 18-102-00
Dwg No: HSC 03137-E
File No: C18-102.00D
Dwg. File: 1810200.dwg

SWIG PID Petition
#6004568.1
015363.0000044852-8538-6909.v2

Exhibit "A"

DESCRIPTION
TRACT #

55.1226 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, City of Tomball, Harris County, Texas, being those certain Outlots 338, 339, 341, 342, 343, 344, 346, 349, 350, 352 and 353 of the Corrected Map of Tomball Outlots, a subdivision as shown on map or plat recorded under Volume 4, Page 75 of the Map Records of Harris County, Texas, said 55.1226 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found in the Easterly right-of-way line of South Persimmon Road (30 foot right-of-way), for the Northwesterly corner of said Outlot 338;

Thence, N 87°35'04" E, along the Southerly line of that certain Lot 1 of Persimmon Properties, a subdivision as shown on map or plat recorded under Film Code Number 679815 of the Map Records of Harris County, Texas, a distance of 1,156.29 feet to a 5/8 inch iron rod with cap set in the Westerly right-of-way line of a Unimproved right-of-way (variable width right-of-way) as shown on said Corrected Map of Tomball Outlots, for the Northeasterly corner of said Outlot 339, from which a found 5/8 inch iron rod with cap bears N 49°09'38" W, 3.69 feet;

Thence, S 02°32'22" E, along the Westerly right-of-way line of said Unimproved right-of-way, a distance of 1,132.81 feet to a 5/8 inch iron rod with cap set for the Northeasterly corner of that certain Outlot 347 of said Corrected Map of Tomball Outlots, from which a found 5/8 inch iron rod bears S 87°44'47" W, 6.90 feet;

Thence, S 87°44'47" W, along the common line of said Outlots 344 and 347, a distance of 584.30 feet to a 5/8 inch iron rod with cap set for the common corner of said Outlots 343, 344, 346 and 347;

Thence, S 02°18'20" E, along the common line of said Outlots 346 and 347, a distance of 377.60 feet to a 5/8 inch iron rod with cap set for the common corner of said Outlots 346, 347, 349 and 350;

Thence, N 87°44'47" E, along the common line of said Outlots 347 and 350, a distance of 585.84 feet to a 5/8 inch iron rod with cap set in the Westerly right-of-way line of said Unimproved right-of-way, for the Southeasterly corner of said Outlot 347, from which a found 5/8 inch iron rod bears S 87°44'47" W, 4.31 feet;

Thence, S 02°32'22" E, along the Westerly right-of-way line of said Unimproved right-of-way, a distance of 755.21 feet to a 5/8 inch iron rod with cap found at the intersection with the Northerly right-of-way line of Sutton Lane (30 foot Unimproved right-of-way) as shown on said Corrected Map of Tomball Outlots, for the Southeasterly corner of said Outlot 353, from which a found 5/8 inch iron rod bears N 57°57'42" W, 2.35 feet;

Thence, S 87°44'47" W, along the Northerly right-of-way line of said Sutton Lane, a distance of 1,160.05 feet to a PK Nail set at the intersection with the Easterly right-of-way line of said South Persimmon Road, for the Southwesterly corner of said Outlot 352;



SWIG PID Petition
#6001568.1
015363.000004\4852-8518-6909.v2

EXHIBIT B

PLANNED DEVELOPMENT - 12

[See attached]

EXHIBIT C

PUBLIC IMPROVEMENTS AND PROJECT COSTS

BUDGET ITEM	PHASE 1	PHASE 2	PHASE 3	TOTAL
1 Cleaning, Grubbing, and Site Prep	235,500.00	113,000.00	141,000.00	\$489,500.00
2 Water Distribution System	227,660.00	176,330.00	151,385.00	\$555,375.00
3 Wastewater Collection System	422,620.00	388,180.00	300,820.00	\$1,111,620.00
4 Storm Water Collection System (On-site)	834,180.00	312,530.00	142,080.00	\$1,288,790.00
5 Storm Water Collection System (Off-site)	582,040.00			\$582,040.00
6 Excavation and Paving	1,691,905.00	1,262,700.00	1,140,440.00	\$4,095,045.00
7 Construction Staking Services (2.5%)	99,847.63	56,318.50	46,893.13	\$203,059.26
Sub-Total Construction Cost	4,093,752.63	2,309,058.50	1,922,618.13	8,325,429.26
Contingencies (10%)	409,375.26	230,905.85	192,261.81	832,542.93
TOTAL CONSTRUCTION COSTS	4,503,127.89	2,539,964.35	2,114,879.94	9,157,972.19
Drainage Impact Fees (\$5,750/Acre)	224,250.00	169,625.00	202,400.00	\$596,275.00
Engineering Fees (14%)	630,437.90	355,595.01	296,083.19	\$1,282,116.10
Storm Water Pollution Prevention Plan (2.5%)	112,578.20	63,499.11	52,872.00	\$228,949.31
Geotechnical Eng. & Construction Materials Testing (2.5%)	112,578.20	63,499.11	52,872.00	\$228,949.31
Sub-Total Impact Fees, Eng., SWPPP, Geotech. Eng. & Const. Materials Testing Fees	1,079,844.30	652,218.23	604,227.19	2,336,289.72
TOTAL PRELIMINARY CONSTRUCTION COST ESTIMATE	5,582,972.19	3,192,182.58	2,719,107.13	11,494,261.91

Costs are estimates and final costs of the Public Improvements shall be as set forth in the applicable Service and Assessment Plan. The Service and Assessment Plan will also include costs of issuance for the PID Bonds.

EXHIBIT D

RESERVED

Exhibit D

EXHIBIT E

LANDOWNER CONSENT

CONSENT AND AGREEMENT OF LANDOWNERS

This Consent and Agreement of Landowner is issued by _____, A Texas limited partnership, as the landowner (the "Landowner") who collectively hold record title to all property located within the [_____ Public Improvement District] (the "PID") created by the City of Tomball pursuant to a petition of Landowner. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the City's ordinance levying assessments on property within the PID, dated _____, 2019, including the Service and Assessment Plan and Assessment Rolls attached thereto (the "Assessment Ordinance"). [TO BE EXECUTED PRIOR TO THE LEVY OF ASSESSMENTS FOR EACH SERIES OF BONDS WITH EACH PID]

Landowner hereby declare and confirm that they collectively hold record title to all property in the PID which are subject to the Assessment Ordinances, as set forth on Exhibit A. Further, Landowner hereby ratify, declare, consent to, affirm, agree to and confirm each of the following:

1. The creation and boundaries of the PID, the boundaries of each Assessed Property, and the Authorized Improvements for which the Assessments are being made, as set forth in the Service and Assessment Plan.
2. The determinations and findings as to benefits by the City in the Assessment Ordinance and the Service and Assessment Plan.
3. The Assessment Ordinance and the Service and Assessment Plan and Assessment Roll.
4. The right, power and authority of the City Council to adopt the Assessment Ordinances and the Service and Assessment Plans and Assessment Roll;
5. Each Assessment levied on each Assessed Property as shown in the Service and Assessment Plan (including interest and Administrative Expenses as identified in the Service and Assessment Plan and as updated from time to time as set forth in the Service and Assessment Plan).
6. The Authorized Improvements specially benefit the Assessed Property in an amount in excess of the Assessment levied on each Assessed Property, as such Assessments are shown on the Assessment Roll.
7. Each Assessment is final, conclusive and binding upon such Landowners, regardless of whether such Landowners may be required to pay Assessments under certain circumstances pursuant to the Service and Assessment Plan.

Exhibit E-1

8. The then-current owner of each Assessed Property shall pay the Assessment levied on the Assessed Property owned by it when due and in the amount required by and stated in the Service and Assessment Plan and the Assessment Ordinance.
9. Delinquent installments of the Assessment shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act.
10. The "Annual Installments" of the Assessments may be adjusted, decreased and extended in accordance with the Service and Assessment Plan, and the then-current owner of each Assessed Property shall be obligated to pay its revised amounts of the Annual Installments, when due, and without the necessity of further action, assessments or reassessments by the City.
11. All notices required to be provided to it under the PID Act have been received and to the extent of any defect in such notice, Landowners hereby waive any notice requirements and consents to all actions taken by the City with respect to the creation of the PID and the levy of the Assessments.
12. That the resolution creating the PID, the Ordinance levying the Assessments, the Service and Assessment Plan and a Notice of Creation of Special Assessment District and Imposition of Special Assessment to be provided by the City, shall be filed in the records of the County Clerk of Harris County, with copies of the recorded documents delivered to the City promptly after receipt thereof by the recording party, as a lien and encumbrance against the Assessed Property.
13. Each Assessed Property owned by the Landowner identified in the Service and Assessment Plan and Assessment Roll are wholly within the boundaries of the PID.
14. There are no Parcels owned by the Landowners within the boundaries of the PID that are not identified in the Service and Assessment Plan and the Assessment Roll.
15. Each Parcel owned by the Landowners identified in the Service and Assessment Plan and Assessment Roll against which no Assessment has been levied was Non-Benefited Property as of _____, 2019.

Originals and Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

[Execution page follows]

Exhibit E-2

IN WITNESS WHEREOF, the undersigned has caused this Agreement and Consent of Landowner to be executed as of _____, 2019.

_____, LP,
a Texas limited partnership

By:

By:

By: _____
Name:
Its

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the ____ day of _____, 20__ by _____, as, a Texas limited liability company on behalf of said company.

Notary Public, State of Texas

EXHIBIT F

FORM OF PAYMENT CERTIFICATE

PAYMENT CERTIFICATE NO. _____

Reference is made to that certain Indenture of Trust by and between the City and the Trustee dated as of _____ (the "Indenture") relating to the "City of Tomball, Texas, Special Assessment Revenue Bonds, Series 20__ (_____ Public Improvement District Project)" (the "Bonds"). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the _____, LP Texas limited partnership (the "Developer") and requests payment to the Developer (or to the person designated by the Developer) from:

_____ the Public Improvement Account of the Project Fund

_____ the Developer Improvement Account of the Project Fund

from The Bank of New York Mellon Trust Company, N.A., (the "Trustee"), in the amount of _____ (\$_____) for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Public Improvements providing a special benefit to property within the _____ Public Improvement District.

In connection with 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 Certificate for Payment Form on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The itemized payment requested for the below referenced Public Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The itemized amounts listed for the Public Improvements below is a true and accurate representation of the Public Improvements associated with the creation, acquisition, or construction of said Public Improvements and such costs (i) are in compliance with the Development Agreement, and (ii) are consistent with and within the cost identified for such Public Improvements as set forth in the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.

5. The Developer has timely paid all ad valorem taxes and Annual Installments of Public Assessments it owes or an entity the Developer controls owes, located in the _____ Public Improvement District and has no outstanding delinquencies for such Public Assessments.

6. All conditions set forth in the Indenture and the Development Agreement for the payment hereby requested have been satisfied.

7. The work with respect to Public Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Public Improvements (or its completed segment).

8. The Developer agrees to cooperate with the City 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.

9. No more than ninety percent (90%) of the budgeted or contracted costs for the Public Improvements identified may be paid until the work with respect to such Public Improvements (or segment) has been completed and the City has accepted such Public Improvements (or segment).

Payments requested are as follows:

Payee / Description of Public Improvement	Total Cost Public Improvement	Budgeted Cost of Public Improvement	Amount requested be paid from the Public Improvement Account	Amount requested to be paid from the Developer Improvement Account

Attached hereto are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Development Agreement, after receiving this payment request, the City has inspected the Public Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

Payments requested hereunder shall be made as directed below:

- a. X amount to Person or Account Y for Z goods or services.

b. Payment instructions

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

_____, LP.,
a Texas limited partnership

By: _____

Name: _____

Title: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, and finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and authorizes and directs payment of the amounts set forth below by Trustee from the Project Fund to the Developer or other person designated by the Developer as listed and directed on such Certificate for Payment. The City's approval of the Certificate for Payment shall not have the effect of estopping or preventing the City from asserting claims under the Development Agreement, the Reimbursement Agreement, the Indenture, the Service and Assessment Plan, or any other agreement between the parties or that there is a defect in the Public Improvements.

Amount of Payment Certificate Request	Amount to be Paid by Trustee from Improvement Account	Amount to be paid by Trustee from Developer Improvement Account
\$ _____	\$ _____	\$ _____

CITY OF TOMBALL, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is an agent for _____, LP, (the "Developer") and requests payment from:

[the Cost of Issuance Account of the Project Fund][the Improvement Account of the Project Fund] from _____, (the "Trustee") in the amount of _____ DOLLARS (\$ _____) for costs incurred in the establishment, administration, and operation of the _____ Public Improvement District (the "District"), as follows:

Closing Costs Description	Cost	PID Allocated Cost
TOTAL		

In connection to the above referenced payments, 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 Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the above referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.
3. The amount listed for the below itemized costs is a true and accurate representation of the Actual Costs incurred by Developer with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with and within the costs as set forth in the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.
5. All conditions set forth in the Indenture for the payment hereby requested have been satisfied.
6. The Developer agrees to cooperate with the City 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.

Payments requested hereunder shall be made as directed below:

- c. X amount to Person or Account Y for Z goods or services.
- d. Payment instructions

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

_____, P, a Texas limited partnership

By: _____

Name: _____

Title: _____

Date: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request to the extent set forth below and authorizes and directs payment by Trustee in such amounts and from the accounts listed below, to the Developer or other person designated by the Developer herein.

Closing Costs	Amount to be Paid by Trustee from Cost of Issuance Account	Amount to be paid by Trustee from Improvement Account
\$ _____	\$ _____	\$ _____

CITY OF TOMBALL, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT H

HOME BUYER DISCLOSURE PROGRAM

The Assessment Company (as defined in the Service and Assessment Plan) for the _____ Public Improvement District (the "PID") shall facilitate notice to prospective homebuyers in accordance with the following minimum requirements:

1. Record notice of the PID in the appropriate land records for the Property.
2. Require homebuilders to attach the Recorded Notice of the Authorization and Establishment of the PID and the final Assessment Roll for such Assessed Parcel (or if the Assessment Roll is not available for such Assessed Parcel, then a schedule showing the maximum 30-year payment for such Assessed Parcel) in an addendum to each residential homebuyer's contract on brightly colored paper.
3. Collect a copy of the addendum signed by each buyer from homebuilders and provide to the City.
4. Require signage indicating that the Property for sale is located in a special assessment district and require that such signage be located in conspicuous places in all model homes.
5. Prepare and provide to homebuilders an overview of the existence and effect of the PID for those homebuilders to include in each sales packet of information that it provides to prospective homebuyers.
6. Notify homebuilders who estimate monthly ownership costs of the requirement that they must include special assessments in estimated Property taxes.
7. Notify Settlement Companies through the homebuilders that they are required to include special taxes on HUD 1 forms and include in total estimated taxes for the purpose of setting up tax escrows.
8. Include notice of the PID in the homeowner association documents in conspicuous bold font.

The Developer and the Assessment Company shall regularly monitor the implementation of this disclosure program and shall take appropriate action to require these notices to be provided when one of them discovers that any requirement is not being complied with.

IN WITNESS WHEREOF, the undersigned has caused this Agreement and Consent of Landowner to be executed as of _____, 2019.

CITY OF TOMBALL

By: _____
Name: _____
Title: City Manager

ATTEST:

City Secretary

EXHIBIT I
DEVELOPMENT PHASES

Exhibit I

FIRST AMENDMENT TO RABURN RESERVE DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO RABURN RESERVE DEVELOPMENT AGREEMENT (this "First Amendment") is made by and between the City of Tomball, Texas, a Texas home-rule municipality (the "City") and HT Raburn Reserve Development L.P., a Texas limited partnership (the "Developer") to be effective June 15, 2020 (the "Effective Date").

RECITALS:

WHEREAS, the City and Developer are sometimes individually referred to as a "Party" and collectively as the "Parties"; and

WHEREAS, the City and the Developer entered into that certain Raburn Reserve Development Agreement (the "Agreement") relating to the development of certain real property within the corporate limits of the City; and

WHEREAS, the recitals contained in this First Amendment: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this First Amendment; and (c) reflect the final intent of the Parties with regard to the subject matter of this First Amendment; and

WHEREAS, the Parties acknowledge and agree that, except to the extent amended herein, all provisions and terms contained in the Agreement remain in full force and effect; and

WHEREAS, the City Council passed and approved the Agreement on October 7, 2019; and

WHEREAS, the Parties desire to amend the Agreement again as set forth herein; and

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this First Amendment, and for good and valuable consideration the receipt and adequacy of which are acknowledged and agreed, the Parties agree as follows:

1. Defined Terms. All capitalized terms used in this First Amendment, to the extent not otherwise expressly defined herein, shall have the meanings ascribed to them in the Agreement.

2. Amendment to Definition of Public Improvement Financing Date. The definition of Phase A Public Improvement Financing Date on Page 5 of the Agreement shall be amended again to read as follows:

"Phase A Public Improvement Financing Date" means the date the City approves a bond purchase agreement and sells the first series of PID Bonds for Phase A of the Property, such date to be no later than November 1, 2020 for Phase A, which date may be extended by written agreement of the Developer and the City."

3. Miscellaneous.

(a) This First Amendment amends the Agreement in no other manner except as expressly set forth herein. Except as amended herein, the terms, provisions, agreements, covenants and conditions of the Agreement shall continue in full force and effect. In the event of a conflict between this First Amendment and the Agreement, the terms of this First Amendment shall control.

(b) This First Amendment together with the Agreement shall constitute the entire agreement between the Parties and supersedes all prior agreements and understandings, whether oral or written, concerning the subject matter of this First Amendment and the Agreement. This First Amendment and the Agreement shall not be modified or amended except in writing signed by the Parties.

(c) If any provision of this First Amendment is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this First Amendment; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the Parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this First Amendment shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

(d) This First Amendment may be executed in one (1) or more counterparts, each of which when taken together shall constitute one and the same instrument.

(e) The City represents and warrants that the individual executing this First Amendment on behalf of the City has been duly authorized to do so. Developer represents and warrants that this First Amendment has been approved by appropriate action of Developer, and that each individual executing this First Amendment on behalf of Developer has been duly authorized to do so.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the Effective Date.

HT RABURN RESERVE DEVELOPMENT LP

By: HT Raburn Reserve Development LLC, its general partner

By: HT Raburn Reserve LP, its sole member

By: Hines Raburn Reserve LLC, its general partner

By: Hines Raburn Reserve Associates LP, its sole member

By: Hines Investment Management Holdings Limited Partnership,
its general partner

By: HIMH GP LLC, its general partner

By: Hines Real Estate Holdings Limited
Partnership, its sole member

By: JCH Investments, Inc.,
its general partner

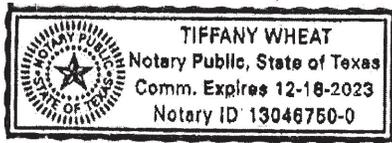
By: 
Name: Adil Noorani
Title: Senior Managing Director

STATE OF TEXAS §

§

COUNTY OF Harris §

This instrument was acknowledged before me on the 21 day of August, 2020 by Adil Noorani, as Senior Managing Director, a Texas partnership on behalf of said company.



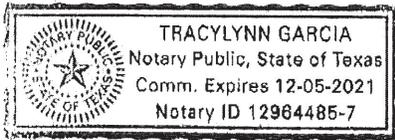
Tiffany Wheat
Notary Public, State of Texas

[SEAL]

STATE OF TEXAS §

§
COUNTY OF Harris §

This instrument was acknowledged before me on the 25 day of August, 2020 by Robert Stauck, as City Manager, a Texas partnership on behalf of said company.



Tracy Lynn Garcia
Notary Public, State of Texas

CITY OF TOMBALL

By: [Signature]
Name: Robert S. Hauck
Title: City Manager

ATTEST:

[Signature]
City Secretary