

Control Number: 43041



Item Number: 65

Addendum StartPage: 0

APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE  
DORCHESTER TO AMEND A §  
CERTIFICATE OF CONVENIENCE § OF  
AND NECESSITY IN GRAYSON §  
COUNTY (37917-C) § ADMINISTRATIVE HEARINGS

**CITY OF DORCHESTER'S RESPONSES TO FOURTH REQUEST FOR  
INFORMATION FROM THE PUBLIC UTILITY COMMISSION OF TEXAS**

COMES NOW, the City of Dorchester (City), by and through its undersigned attorney, and files this its Responses to the Public Utility Commission (PUC) Staff's Fourth Request for Information. This Response may be treated by all parties as if it was filed under oath. The requests and responses are addressed below:

Staff 4-1. Based on a review of mapping data provided by Dorchester, Staff noted an overlap with the borders of Kings Crossing MUD. Kings Crossing MUD has the ability to provide retail water service within their district boundaries; therefore, Staff requests written consent from Kings Crossing MUD allowing the City of Dorchester to provide retail water service within the District's boundary.

**ANSWER:**

As stated in the City's previous responses to request for information, the City does not believe there is an overlap with King's Crossing Municipal Utility District (King's Crossing MUD). The shapefile from the Texas Commission on Environmental Quality's (TCEQ) database does not accurately depict the boundaries of King's Crossing MUD. Attached for your information is the enabling legislation of King's Crossing MUD. Section 2 of that legislation describes the four tracts of land that make up King's Crossing MUD – a 146 acre tract, a 60.2 acre tract, a 12.5 acre tract, and a 40 acre tract. The City has requested the shapefiles of these tracts from Grayson County to more accurately describe the boundaries of the King's Crossing MUD, but has not yet obtained that information. With that being said, the metes and bounds description in the King's Crossing MUD's enabling legislation clearly show that the TCEQ's shapefiles, when placed on the base map used by the PUC, are not accurate.

65

Section 2 of King's Crossing's legislation contains the metes and bounds description of the King's Crossing MUD. The boundary of the King's Crossing MUD starts at the center of Farmington Road and Hall Cemetery Road and then goes north along the center of Farmington Road, and along the west property lines of the two properties (60.2 acre tract and 146 acre tract) that are part of King's Crossing MUD. The line then runs along the common line between a 34 acre tract (which is not part of the King's Crossing MUD) and the 146 acre tract to a 1-inch iron pipe found at an angle point in the center of Davis Road. (We believe Davis Road is another name for Matthews Road because a portion of the road after the intersection at Smith Road, but before the intersection at W. Young St., is called Davis Road.) From there, the boundary runs along the approximate center of Davis Road to another angle point in the road. The boundary line then runs along the approximate center of Davis Road. At the close of the boundary of King's Crossing MUD, the line runs along the center of Hall Cemetery Road to the beginning point at the center of Farmington Road and Hall Cemetery Road. The TCEQ's shapefile does not match this description. The boundaries shown in the TCEQ's shapefile does not run down the center of Farmington Road, Davis Road (which is also Matthews Road), or Hall Cemetery Road. Based on this information, the City requests that the PUC Staff reconsider its request that the City provide consent from King's Crossing MUD.

**David Smith, Mayor of the City of Dorchester, sponsors this answer.**

Staff 4-2. This application is requesting additional area that would expand Dorchester's CCN, which could result in additional customers in the future and additional needed capacity. Staff requests any documentation submitted to TCEQ for any future additions to plant to accommodate future customers and increased capacity.

**ANSWER:**

The City entered into the August 8, 2011 Development Agreement with Walton Texas LP, the developer of the property that is the subject of the City's pending application to amend its certificate of convenience and necessity. Pursuant to that Development Agreement, the City and Walton agreed that either Cottonwood Municipal Utility District No. 2 of Grayson County or Walton would design, construct, and install the necessary infrastructure to provide water service to the development at no cost to the City. Once the facilities are in place, the City will then provide retail water service to the development. Attached for your information is the 2011 Development Agreement without exhibits. Neither the District nor Walton have submitted any designs with the Texas Commission on Environmental Quality, but will do so before they begin development of the property.

**David Smith, Mayor of the City of Dorchester, sponsors this answer.**

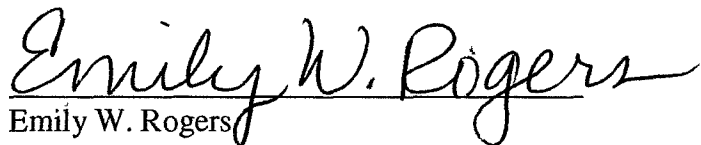
Respectfully submitted,

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BY:   
Emily W. Rogers

**CERTIFICATE OF SERVICE**

I hereby certify by my signature below that on the 17<sup>th</sup> day of November, 2016, a true and correct copy of the above and foregoing document was forwarded via hand delivery, facsimile, U.S. mail or electronic mail to all parties of record.

  
Emily W. Rogers

1 AN ACT

2 relating to the creation of the King's Crossing Municipal Utility  
3 District of Grayson County; providing authority to impose a tax and  
4 issue bonds; granting the power of eminent domain.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subtitle F, Title 6, Special District Local Laws  
7 Code, is amended by adding Chapter 8251 to read as follows:

8 CHAPTER 8251. KING'S CROSSING MUNICIPAL UTILITY DISTRICT OF  
9 GRAYSON COUNTY

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 8251.001. DEFINITIONS. In this chapter:

12 (1) "Board" means the district's board of directors.

13 (2) "Director" means a board member.

14 (3) "District" means the King's Crossing Municipal  
15 Utility District of Grayson County.

16 Sec. 8251.002. NATURE OF DISTRICT. The district is a  
17 municipal utility district in Grayson County created under and  
18 essential to accomplish the purposes of Section 52, Article III,  
19 and Section 59, Article XVI, Texas Constitution.

20 Sec. 8251.003. FINDING OF PUBLIC USE AND BENEFIT. The  
21 district is created to serve a public use and benefit.

22 Sec. 8251.004. CONFIRMATION ELECTION REQUIRED. If the  
23 creation of the district is not confirmed at a confirmation  
24 election held under Section 8251.024 before September 1, 2009:

1           (1) the district shall, as soon as it reasonably knows  
2 the district will not be confirmed and before September 1, 2009:

3                   (A) pay any debts incurred; and

4                   (B) transfer to Grayson County any assets that  
5 remain after the payment of debts;

6           (2) the district is dissolved September 1, 2009; and

7           (3) this chapter expires September 1, 2009.

8           Sec. 8251.005. INITIAL DISTRICT TERRITORY. (a) The  
9 district is initially composed of the territory described by  
10 Section 2 of the Act creating this chapter.

11           (b) The boundaries and field notes contained in Section 2 of  
12 the Act creating this chapter form a closure. A mistake made in the  
13 field notes or in copying the field notes in the legislative process  
14 does not affect:

15                   (1) the organization, existence, or validity of the  
16 district;

17                   (2) the right of the district to impose taxes; or

18                   (3) the legality or operation of the board.

19           [Sections 8251.006-8251.020 reserved for expansion]

20                   SUBCHAPTER A-1. TEMPORARY PROVISIONS

21           Sec. 8251.021. TEMPORARY DIRECTORS. (a) The temporary  
22 board consists of:

23                   (1) Hill Johnson;

24                   (2) Joe Henneburger;

25                   (3) Bill Casanova;

26                   (4) Adrian Butler; and

27                   (5) Kevin Eddy.

1        (b) If a temporary director fails to qualify for office, the  
2        temporary directors who have qualified shall appoint a person to  
3        fill the vacancy. If at any time there are fewer than three  
4        qualified temporary directors, the Texas Commission on  
5        Environmental Quality shall appoint the necessary number of persons  
6        to fill all vacancies on the board.

7        (c) Temporary directors serve until the earlier of:

8                (1) the date directors are elected under Section  
9        8251.024; or

10               (2) the date this chapter expires under Section  
11        8251.004.

12        Sec. 8251.022. ORGANIZATIONAL MEETING OF TEMPORARY  
13        DIRECTORS. As soon as practicable after all the temporary  
14        directors have qualified under Section 49.055, Water Code, the  
15        temporary directors shall convene the organizational meeting of the  
16        district at a location in the district agreeable to a majority of  
17        the directors. If a location cannot be agreed upon, the  
18        organizational meeting shall be at the Grayson County Courthouse.

19        Sec. 8251.023. DEVELOPMENT AGREEMENT REQUIRED. The  
20        temporary directors may not hold an election under Section 8251.024  
21        or approve the issuance of bonds until a district landowner enters  
22        into a development agreement regarding district land with the City  
23        of Howe.

24        Sec. 8251.024. CONFIRMATION AND INITIAL DIRECTORS'  
25        ELECTION. The temporary directors shall hold an election to  
26        confirm the creation of the district and to elect five directors as  
27        provided by Section 49.102, Water Code.

1       Sec. 8251.025. INITIAL ELECTED DIRECTORS; TERMS. The  
2       directors elected under Section 8251.024 shall draw lots to  
3       determine which two shall serve until the first regularly scheduled  
4       election of directors and which three shall serve until the second  
5       regularly scheduled election of directors.

6       Sec. 8251.026. EXPIRATION OF SUBCHAPTER. This subchapter  
7       expires September 1, 2009.

8       [Sections 8251.027-8251.050 reserved for expansion]

9                       SUBCHAPTER B. BOARD OF DIRECTORS

10       Sec. 8251.051. DIRECTORS; TERMS. (a) The district is  
11       governed by a board of five directors.

12       (b) Directors serve staggered four-year terms.

13       [Sections 8251.052-8251.100 reserved for expansion]

14                       SUBCHAPTER C. POWERS AND DUTIES

15       Sec. 8251.101. MUNICIPAL UTILITY DISTRICT POWERS AND  
16       DUTIES. The district has the powers and duties provided by the  
17       general law of this state, including Chapters 49 and 54, Water Code,  
18       applicable to municipal utility districts created under Section 59,  
19       Article XVI, Texas Constitution.

20       Sec. 8251.102. ROAD PROJECTS. (a) The district may  
21       construct, acquire, improve, maintain, or operate macadamized,  
22       graveled, or paved roads or improvements in aid of those roads,  
23       inside or outside the district.

24       (b) A road project must meet all applicable construction  
25       standards, zoning and subdivision requirements, and regulations of  
26       each municipality in whose corporate limits or extraterritorial  
27       jurisdiction the district is located. If the district is not



1 located in the corporate limits or extraterritorial jurisdiction of  
2 a municipality, a road project must meet all applicable  
3 construction standards, zoning and subdivision requirements, and  
4 regulations of each county in which the district is located.

5 (c) The district may not undertake a road project unless  
6 each municipality in whose corporate limits or extraterritorial  
7 jurisdiction the district is located consents by resolution. If  
8 the district is not located in the corporate limits or  
9 extraterritorial jurisdiction of a municipality, the district may  
10 not undertake a road project unless each county in which the  
11 district is located consents by resolution.

12 Sec. 8251.103. ROAD CONTRACTS. The district may contract  
13 for a road project in the manner provided by Subchapter I, Chapter  
14 49, Water Code.

15 Sec. 8251.104. MAINTENANCE AND REPAIR OF ROADS IN TERRITORY  
16 OUTSIDE CORPORATE LIMITS OF MUNICIPALITY. If district territory,  
17 or a portion of district territory, is located outside the  
18 corporate limits of a municipality, the district shall:

19 (1) maintain, improve, operate, and repair any road  
20 located in that territory in accordance with the ordinances and  
21 rules of each political subdivision in whose jurisdiction the road  
22 is located; and

23 (2) pay for the cost of performing the district's  
24 duties under Subdivision (1).

25 [Sections 8251.105-8251.150 reserved for expansion]

26 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

27 Sec. 8251.151. OPERATION AND MAINTENANCE TAX. The district

1 may impose a tax for any district operation and maintenance purpose  
2 in the manner provided by Section 49.107, Water Code.

3 Sec. 8251.152. TAX TO REPAY BONDS. The district may impose  
4 a tax to pay the principal of and interest on bonds issued under  
5 Section 8251.201.

6 Sec. 8251.153. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND  
7 ASSESSMENTS. The district may not impose an impact fee or  
8 assessment on the property, including the equipment,  
9 rights-of-way, facilities, or improvements, of:

10 (1) an electric utility or a power generation company  
11 as defined by Section 31.002, Utilities Code;

12 (2) a gas utility as defined by Section 101.003 or  
13 121.001, Utilities Code;

14 (3) a telecommunications provider as defined by  
15 Section 51.002, Utilities Code;

16 (4) a cable operator as defined by 47 U.S.C. Section  
17 522; or

18 (5) a person who provides to the public advanced  
19 telecommunications services.

20 [Sections 8251.154-8251.200 reserved for expansion]

21 SUBCHAPTER E. BONDS

22 Sec. 8251.201. AUTHORITY TO ISSUE BONDS AND OTHER  
23 OBLIGATIONS. (a) The district may issue bonds or other obligations  
24 as provided by Chapters 49 and 54, Water Code, and to finance the  
25 construction, maintenance, or operation of projects under Section  
26 8251.102.

27 (b) The district may issue bonds or other obligations

1 payable wholly or partly from ad valorem taxes, impact fees,  
2 revenue, grants, or other district money.

3 (c) The district may not issue bonds or other obligations  
4 secured wholly or partly by ad valorem taxation to finance projects  
5 authorized by Section 8251.102 unless the issuance is approved by a  
6 vote of a two-thirds majority of district voters voting at an  
7 election called for that purpose.

8 (d) Bonds or other obligations issued or incurred to finance  
9 projects authorized by Section 8251.102 may not exceed one-fourth  
10 of the assessed value of the real property in the district.

11 SECTION 2. The King's Crossing Municipal Utility District  
12 of Grayson County initially includes all the territory contained in  
13 the following described area:

14 TRACT 1

15 BEING a tract of land situated in the J. ARMENDARIS SURVEY, ABSTRACT  
16 NO. 39, the J. MARSHALL SURVEY, ABSTRACT NO. 868, the C. MASON  
17 SURVEY, ABSTRACT NO. 859 and the E. REYNOLDS SURVEY; ABSTRACT NO.  
18 1008, in Grayson County, Texas, and being all of a called 146 acre  
19 tract of land described in a deed to W. C. King recorded in Volume  
20 464, Page 531 of the Deed Records of Grayson County, Texas, part of  
21 a called 273.2255 acre tract described in a deed to W. C. King  
22 recorded in Volume 418, Page 320 of said Deed Records, (both of said  
23 King tracts being subsequently conveyed in part to Joe C. King,  
24 Nancy Jane Yarborough and the Mary Ann Arterbury Revocable Trust by  
25 deeds recorded in Volume 2182, Page 950, Volume 2192, Page 234,  
26 Volume 2249, Page 895, and Volume 3259, Page 266, all of said Deed  
27 Records), all of a called 60.2 acre tract of land described as Tract

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1 One in a deed to Nancy McElreath King recorded in Volume 953, Page  
2 307 of said Deed Records, all of a called 12.5 acre tract of land  
3 described as Tract Two in said deed, and all of a called 40 acre  
4 tract of land described as Tract Three in said deed, and being more  
5 particularly described as follows:

6 BEGINNING at a railroad spike found at the intersection of the  
7 center of Farmington Road (undedicated public road) with the center  
8 of Hall Cemetery Road (undedicated public road), said point being  
9 the southwest corner of said 60.2 acre tract;

10 THENCE North 00 degrees 57 minutes 32 seconds West, along the  
11 approximate center of Farmington Road, and along the west lines of  
12 said 60.2 acre tract and said 146 acre tract, a distance of 2577.20  
13 feet to a 1-inch iron pipe found for the most westerly northwest  
14 corner of said 146 acre tract and the south corner of a called 34  
15 acre tract of land described in a deed to the Burks Family Trusts  
16 recorded in Volume 3128, Page 820 of said Deed Records;

17 THENCE North 34 degrees 38 minutes 57 seconds East, along the common  
18 line between said 34 acre tract and said 146 acre tract, a distance  
19 of 2574.44 feet to a 1-inch iron pipe found at an angle point in the  
20 approximate center of Davis Road (undedicated public road) for the  
21 east corner of said 34 acre tract and the most southerly southeast  
22 corner of a called 123.8843 acre tract of land described in a deed  
23 to C. J. Matthews and wife Dorothy Matthews recorded in Volume 1180,  
24 Page 590 of said Deed Records;

25 THENCE North 33 degrees 34 minutes 50 seconds East, along the common  
26 line between said 146 acre tract and said 123.8843 acre tract, and  
27 along the approximate center of Davis Road, a distance of 989.01

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1 feet to a 1-inch iron pipe found at an angle point in said road for  
2 most northerly northwest corner of said 146 acre tract;  
3 THENCE South 89 degrees 56 minutes 45 seconds East, along the  
4 approximate center of Davis Road and the north lines of said 146  
5 acre tract and said 273.2255 acre tract, a distance of 3122.85 feet  
6 to a 5/8-inch iron rod with cap marked "PETITT RPLS 4087" set for  
7 corner;  
8 THENCE South 00 degrees 55 minutes 04 seconds East, along the  
9 prolongation of and the west lines of a called 0.923 acre tract  
10 described in a deed to Joe C. King and wife Katie Mae King recorded  
11 in Volume 1518, Page 747 of said Deed Records, a called 3.086 acre  
12 tract of land, described in a deed to Joe C. King and wife Katie Mae  
13 King recorded in Volume 1331, Page 150, a tract of land described in  
14 a deed to Joe C. King recorded in Volume 1293, Page 77 of said Deed  
15 Records, a distance of 3195.54 feet to a 5/8-inch iron rod with cap  
16 marked "PETITT RPLS 4087" set for a point of the north line of  
17 Western Hills, an addition to the City of Howe according to the plat  
18 thereof recorded in Volume 3, Page 76 of the Map Records of Grayson  
19 County, Texas.  
20 THENCE South 89 degrees 24 minutes 28 seconds West, along the north  
21 line of Western Hills, and addition to the City of Howe, a distance  
22 of 1.52 feet to the northwest corner of said Western Hills to a  
23 5/8-inch iron rod with cap marked "PETITT RPLS 4087" set for corner;  
24 THENCE South 00 degrees 48 minutes 45 seconds East, departing the  
25 northwest corner of said Western Hills, and along the most  
26 southerly east line of said 273.2255 acre tract, a distance of  
27 410.53 feet to a 5/8-inch iron rod with cap marked "PETITT - RPLS

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1 4087" set for the most southerly southeast corner of said 273.2255  
2 acre tract and the northeast corner of a called 111.5 acre tract  
3 described in a deed to Robert Glen Sollis, Jr., recorded in Volume  
4 2352, Page 222 of said Deed Records;

5 THENCE North 89 degrees 21 minutes 25 seconds West, along the common  
6 line between said 273.2255 acre tract and said 111.5 acre tract, a  
7 distance of 2591.12 feet to a 5/8-inch iron rod with cap marked  
8 "PETITT - RPLS 4087" set for the northwest corner of said 111.5 acre  
9 tract and the northeast corner of said 40 acre tract;

10 THENCE South 00 degrees 48 minutes 45 seconds East, along the common  
11 line between said 111.5 acre tract and said 40 acre tract, a distance  
12 of 1904.72 feet to a 5/8-inch iron rod with cap marked "PETITT -  
13 RPLS 4087" set in the approximate center of Hall Cemetery Road for  
14 the southeast corner of said 40 acre tract;

15 THENCE South 89 degrees 13 minutes 54 seconds West, along the  
16 approximate center of Hall Cemetery Road and the south lines of said  
17 40 acre tract, said 12.5 acre tract and said 60.2 acre tract, a  
18 distance of 2582.24 feet to the POINT OF BEGINNING and containing  
19 470.470 acres of land, more or less.

20 TRACT 2

21 BEING A TRACT OF LAND SITUATED IN THE J. ARMENDARIS SURVEY, ABSTRACT  
22 NO. 39, THE J. MARSHALL SURVEY, ABSTRACT NO. 825, AND THE E.  
23 REYNOLDS SURVEY, ABSTRACT NO. 1008, IN GRAYSON COUNTY, TEXAS, AND  
24 BEING A PORTION OF A CALLED 57.898 ACRE TRACT DESCRIBED IN A DEED TO  
25 JOE CLYDE KING RECORDED IN VOLUME 3693, PAGE 147 OF THE DEED RECORDS  
26 OF GRAYSON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS  
27 FOLLOWS:

1 , BEGINNING AT A NAIL FOUND IN THE APPROXIMATE CENTER OF DAVIS ROAD  
2 (UNDEDICATED PUBLIC ROAD) FOR THE NORTHEAST CORNER OF SAID 57.898  
3 ACRE TRACT AND THE NORTHWEST CORNER OF A CALLED 29.732 ACRE TRACT OF  
4 LAND DESCRIBED AS TRACT 1 IN A DEED TO JERRY L. KING AND DONNA KING  
5 BEDGOOD RECORDED IN VOLUME 2001, PAGE 107 OF SAID DEED RECORDS;  
6 THENCE ALONG THE COMMON LINE BETWEEN SAID 29.732 ACRE TRACT AND SAID  
7 57.898 ACRE TRACT AS FOLLOWS:  
8 SOUTH 26 DEGREES 30 MINUTES 31 SECONDS EAST, A DISTANCE OF 274.02  
9 FEET TO A 5/8-INCH IRON ROD WITH CAP MARKED "PETITT - RPLS 4087" SET  
10 FOR CORNER;  
11 SOUTH 22 DEGREES 04 MINUTES 49 SECONDS EAST, A DISTANCE OF 371.90  
12 FEET TO A 5/8-INCH IRON ROD WITH CAP MARKED "PETITT - RPLS 4087" SET  
13 FOR CORNER;  
14 SOUTH 64 DEGREES 31 MINUTES 10 SECONDS EAST, A DISTANCE OF 174.55  
15 FEET TO A 5/8-INCH IRON ROD WITH CAP MARKED "PETITT - RPLS 4087" SET  
16 FOR THE MOST EASTERLY NORTHEAST CORNER OF SAID 57.898 ACRE TRACT AND  
17 THE NORTHWEST CORNER OF WESTERN HILLS COMMERCIAL, AN ADDITION TO  
18 THE CITY OF HOWE ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3,  
19 PAGE 79 OF THE PLAT RECORDS OF GRAYSON COUNTY, TEXAS;  
20 THENCE SOUTH 00 DEGREES 54 MINUTES 15 SECONDS EAST, ALONG THE  
21 EASTERLY LINE OF SAID 57.898 ACRE TRACT AND THE WEST LINE OF SAID  
22 WESTERN HILLS COMMERCIAL, A DISTANCE OF 360.57 FEET TO A 5/8-INCH  
23 IRON ROD WITH CAP MARKED "PETITT - RPLS 4087" SET FOR CORNER FROM  
24 WHICH A 1/2-INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID  
25 WESTERN HILLS COMMERCIAL BEARS SOUTH 00 DEGREES 54 MINUTES 15  
26 SECONDS EAST, A DISTANCE OF 305.41 FEET;  
27 THENCE SOUTH 89 DEGREES 31 MINUTES 09 SECONDS WEST, DEPARTING SAID

1 EASTERLY AND WEST LINES AND OVER AND ACROSS SAID 57.898 ACRE TRACT,  
2 A DISTANCE OF 905.24 FEET TO A 5/8-INCH IRON ROD WITH CAP MARKED  
3 "PETITT - RPLS 4087" SET IN THE WEST LINE OF SAID 57.898 ACRE TRACT  
4 SAME BEING THE EAST LINE OF A TRACT OF LAND DESCRIBED IN A DEED TO AP  
5 HOWE LIMITED PARTNERSHIP FILED IN VOLUME 3814, PAGE 898, OF SAID  
6 DEED RECORDS;

7 THENCE NORTH 00 DEGREES 55 MINUTES 04 SECONDS WEST, ALONG SAID EAST  
8 AND WEST LINES, A DISTANCE OF 1030.55 FEET TO A NAIL FOUND IN THE  
9 APPROXIMATE CENTER OF SAID DAVIS ROAD FOR THE NORTHWEST CORNER OF  
10 SAID 57.898 ACRE TRACT AND THE NORTHEAST CORNER OF SAID AP HOWE  
11 LIMITED PARTNERSHIP TRACT;

12 THENCE SOUTH 89 DEGREES 56 MINUTES 50 SECONDS EAST, ALONG THE NORTH  
13 LINE OF SAID 57.898 ACRE TRACT AND THE APPROXIMATE CENTER OF SAID  
14 DAVIS ROAD, A DISTANCE OF 160.56 FEET TO A RAILROAD SPIKE FOUND FOR  
15 AN ANGLE POINT;

16 THENCE NORTH 89 DEGREES 31 MINUTES 33 SECONDS EAST, CONTINUING  
17 ALONG SAID NORTH LINE AND THE APPROXIMATE CENTER OF SAID DAVIS ROAD,  
18 A DISTANCE OF 335.80 FEET TO THE POINT OF BEGINNING AND CONTAINING  
19 762,300 SQUARE FEET, OR 17.500 ACRES OF LAND, MORE OR LESS.

20 SECTION 3. (a) The legal notice of the intention to  
21 introduce this Act, setting forth the general substance of this  
22 Act, has been published as provided by law, and the notice and a  
23 copy of this Act have been furnished to all persons, agencies,  
24 officials, or entities to which they are required to be furnished  
25 under Section 59, Article XVI, Texas Constitution, and Chapter 313,  
26 Government Code.

27 (b) The governor, one of the required recipients, has



1 submitted the notice and Act to the Texas Commission on  
2 Environmental Quality.

3 (c) The Texas Commission on Environmental Quality has filed  
4 its recommendations relating to this Act with the governor, the  
5 lieutenant governor, and the speaker of the house of  
6 representatives within the required time.

7 (d) All requirements of the constitution and laws of this  
8 state and the rules and procedures of the legislature with respect  
9 to the notice, introduction, and passage of this Act are fulfilled  
10 and accomplished.

11 SECTION 4. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section 39, Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2007.

H.B. No. 4096

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 4096 was passed by the House on May 17, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 4096 was passed by the Senate on May 22, 2007, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is executed between Walton Texas LP, a Texas limited partnership, acting by and through its general partner in its capacity as owner, operator and manager, as applicable, Walton Southern U.S. Land LP, an Alberta limited partnership, Walton TX Cottonwood Limited Partnership, an Alberta limited partnership, and Walton USA Cottonwood, LP, a Delaware limited partnership (collectively, "Owner") and the City of Dorchester, Texas, a general law city of the State of Texas (the "City") (Owner and City being individually referred to as a "Party" and, collectively, as the "Parties") to be effective August 8, 2011 (the "Effective Date").

### ARTICLE I RECITALS

**WHEREAS**, Owner is the owner, operator and manager of approximately 829.133 acres of real property located in Grayson County, Texas (the "County") described by metes and bounds and depicted on Exhibit A (the "Property"); and

**WHEREAS**, Owner submitted a petition to the City requesting that the City extend its extraterritorial jurisdiction ("ETJ") to include all of the Property, which petition was approved by the City Council on August 8, 2011, by adoption of Ordinance No. 1102 expanding the City's ETJ to include the Property; and

**WHEREAS**, the Property is located wholly within the ETJ of the City and not within the ETJ or corporate limits of any other town or city; and

**WHEREAS**, the Parties intend that a north-south arterial roadway (the "Spine Road") will be constructed on the Property commencing at FM 902 and extending in a southerly direction in connection with development of the Property, as shown on the Concept Plan attached hereto as Exhibit E; and

**WHEREAS**, the eastern boundary of the City's ETJ expanded pursuant to Ordinance No. 1102 abuts the proposed location of the east right-of-way line of the Spine Road; and

**WHEREAS**, upon approval of the final alignment and design for Spine Road, to the extent possible, the City agrees to modify its ETJ boundary to follow the east right-of-way line of Spine Road until the right-of-way intersects with the centerline of Squirrel Creek and to follow such creek centerline to the southern boundary of the Property, as depicted on Exhibit B, it being the Parties' intention that all right-of-way for Spine Road will be included in the City's ETJ; and

**WHEREAS**, pursuant to Section 242.001(a)(3) of the Texas Local Government Code, the City has exclusive jurisdiction over subdivision platting and all related permits for the Property, except as modified by this Agreement; and

**WHEREAS**, the Parties intend that the Property be developed within the City's ETJ; and

**WHEREAS**, notwithstanding the fact that the Property is located within the City's ETJ and is not subject to the City's zoning regulations, the Parties intend that the Property be developed as a high-quality, master-planned, mixed-use community including parkland, open space, and other public and private amenities that will benefit and serve the present and future citizens of the City pursuant to development regulations contained in this Agreement, which will be recorded in the deed records of the County (so as to bind Owner and all future owners of the Property or any portion thereof), and will provide regulatory certainty during the term of this Agreement; and

**WHEREAS**, the Parties intend for the Property to be immune from full-purpose annexation by the City for the term of, and as otherwise provided by, this Agreement; and

**WHEREAS**, the Parties intend that areas of the Property developed for retail purposes be annexed, from time to time, by the City for the sole and limited purpose of allowing the City to collect sales and use taxes within the annexed retail areas pursuant to Section 43.0751 of the Texas Local Government Code, provided, however, any such limited purpose annexation is not intended to create a "limited district" as that term is defined in Section 43.0751(a)(2) of the Texas Local Government Code; and

**WHEREAS**, Owner is the owner of approximately 645.908 acres of real property adjacent to the Property depicted on Exhibit B (the "Adjacent Property"); and

**WHEREAS**, Owner intends to develop all or portions of the Adjacent Property as a master-planned, mixed-use community consistent with development of the Property; and

**WHEREAS**, approximately 640 acres of the Property are in Certificate of Convenience and Necessity ("CCN") No. 12013 issued by the Texas Commission on Environmental Quality ("TCEQ") to the City for retail water service, approximately ten acres of the Property are in CCN No. 10183 issued to the Elmont Farmington Water Supply Corporation for retail water service, and the remainder of the Property is not located within a CCN for retail water service, as shown on Exhibit C; and

**WHEREAS**, the Property is not located within a CCN for retail wastewater service; and

**WHEREAS**, water, sewer, drainage, roadway, and other public infrastructure ("Public Infrastructure") is not currently available to serve the Parties' intended development of the Property; and

**WHEREAS**, Owner intends to explore options to obtain water and wastewater service for the Property in a cost effective manner and at reasonable rates, taking into consideration the availability of treated water and wastewater treatment services and the cost of off-site facilities needed to provide such services to the Property; and

**WHEREAS**, the Parties acknowledge that provision of retail water service to the Property and the Adjacent Property located west of Farmington Road by one provider will facilitate the efficient design and construction of infrastructure and the provision of a uniform service level to residents of the Property and the Adjacent Property; and

**WHEREAS**, the Parties acknowledge that provision of retail wastewater service to the Property and the Adjacent Property located west of Farmington Road by one provider will facilitate the efficient design and construction of infrastructure and the provision of a uniform service level to residents of the Property and the Adjacent Property; and

**WHEREAS**, the Parties intend that retail water service to the Property will be provided by the City; and

**WHEREAS**, the Parties intend that retail wastewater service to the Property will be provided by the City, the District (as hereafter defined), or other provider with the ability to provide retail wastewater service at a reasonable rate; and

**WHEREAS**, the Parties intend that the Parties will cooperate with respect to certification of the Property for retail water service and wastewater service; and

**WHEREAS**, due to the location and other natural features of the Property, the cost of the Public Infrastructure does not allow the Parties' intended development of the Property in a cost-effective and market-competitive manner; and

**WHEREAS**, the City is unable (at the current time and for the foreseeable future) to fund the construction of, or participate in the cost of, the Public Infrastructure that will allow the Parties' intended development of the Property; and

**WHEREAS**, the City is unable (at the current time and for the foreseeable future) to provide full municipal services for the Parties' intended development of the Property; and

**WHEREAS**, to facilitate the Parties' intended development of the Property in a cost-effective and market-competitive manner, Owner submitted a written petition to the City Council of the City (the "City Council") dated July 27, 2011, requesting that the City Council consent to the creation of Cottonwood Municipal Utility District No. 2 of Grayson County (Cottonwood Municipal Utility District No. 2 of Grayson County and any district resulting from division thereof shall be referred to hereafter as a "District") that will include all of the Property; and

**WHEREAS**, the City Council adopted Resolution No. 1101 dated August 8, 2011 consenting to the creation of the District (the "Consent Resolution"), a copy of which Consent Resolution is attached as Exhibit D; and

**WHEREAS**, the City has also consented to the creation of the District as set forth in this Agreement; and

**WHEREAS**, the Parties intend that the consents given by the City (both in the Consent Resolution and this Agreement) to the creation of the District shall be unconditional and irrevocable and are given in full satisfaction of all statutory and regulatory requirements including, but not limited to, any applicable requirement for consent contained in the Texas Water Code, the Texas Local Government Code, or any rule, regulation, or policy promulgated by the TCEQ; and

**WHEREAS**, the Parties intend that the Public Infrastructure necessary for the intended development of the Property in a cost-effective and market-competitive manner will be

constructed in accordance with plans approved by the City and in compliance with the Governing Regulations (hereafter defined), applicable requirements of the Texas Water Code, and the rules, regulations and policies of the TCEQ and CCN-holders; and

**WHEREAS**, the Parties intend that the District, or Owner as appropriate, will design, construct and install the Public Infrastructure at no expense to the City using funds advanced to the District by Owner; and that the District will thereafter reimburse Owner for such advances using the proceeds of bonds issued by the District and secured by ad valorem taxes levied on property within the District and by other funds legally available to the District (with the City having no responsibility or liability for any District bonds); and

**WHEREAS**, the Parties intend that the District will provide, or cause to be provided, police, fire and EMS services to serve the Parties' intended development of the Property; and

**WHEREAS**, the Parties' intended development of the Property, including the design, construction and installation of Public Infrastructure, will benefit the City and its current and future citizens, including the creation of substantial future tax base for the City and the creation of a population (whether in or out of the City limits) that will support businesses within the City and generate sales tax revenue for the City; and

**WHEREAS**, the Parties intend that this Agreement be a development agreement as provided for by Section 212.172 of the Texas Local Government Code; and

**WHEREAS**, the Parties have the authority to enter into this Agreement pursuant to Section 212.171 et seq of the Texas Local Government Code;

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

## **ARTICLE II** **DEVELOPMENT REGULATIONS**

2.1 **Governing Regulations**. Development of the Property shall be governed solely by the following regulations (collectively, the "**Governing Regulations**");

(a) the Concept Plan attached as **Exhibit E** as amended from time to time in accordance with this Agreement (the "**Concept Plan**"), which Concept Plan is considered to be a development plan as provided for in Section 212.172 of the Texas Local Government Code; and

(b) the subdivision regulations attached as **Exhibit F** (the "**Subdivision Regulations**"); and

(c) the International Building Code adopted by the City, and, to the extent they do not conflict with codes adopted by the City, any other standard building, plumbing, and fire codes not adopted by the City, but that have been adopted by the City of Sherman and generally enforced within Sherman's corporate limits, as amended by the City of Sherman, provided, however, at the City's election, building, plumbing, and fire codes adopted by the City and

generally enforced within the City's corporate limits, as amended, shall govern development of the Property (the "Building Codes"); and

(d) the development standards set forth on Exhibit G (the "Development Standards"); and

(e) final plats for portions of the Property that are approved, from time to time, by the City in accordance with this Agreement (each, an "Approved Plat"); and

(f) revisions and waivers of the Development Standards and the Subdivision Regulations allowed by this **Article II**; and

(g) State and Federal Requirements described in this **Article II**; and

(h) Development Processes described in **Article III**; and

(i) Development Charges described in **Article IV**; and

(j) Public Infrastructure and Retail Utility Service provisions of **Article V**.

## **2.2 Concept Plan Revisions.**

(a) Owner may revise the Concept Plan, from time to time, subject to the following conditions:

(i) the revision is approved, in writing, by the owners of all the property within the areas being revised; and

(ii) Owner approves the revision in writing; and

(iii) a revised Concept Plan is submitted to the City concurrently with the submission of any preliminary plat covering any portion of the Property subject to the change; and

(iv) residential density permitted by the revised Concept Plan does not exceed an average of 3.9 residential dwelling units per Gross Acre (hereafter defined); and

(v) a minimum of fifteen percent (15%) percent of the Property and the Adjacent Property is designated on the revised Concept Plan for Open Space (hereafter defined); and

(vi) the general alignment and classification of the major roadways are not altered.

(b) The Concept Plan may be revised with the approval of Owner, the City, and the owners of the portions of the Property subject to the revision. Such revision is not subject to the requirements set out in **Subsection (a)**.

(c) If the Concept Plan is revised as provided by this section, the revision shall be considered an amendment to this Agreement, and the City shall cause the revised Concept Plan

to be attached to the official version of this Agreement on file in the City Secretary's Office and shall file the revised Concept Plan in the Grayson County property records.

2.3 Zoning. Owner may use and develop the Property in accordance with this Agreement before and after annexation of the Property by the City. In the event of any conflict between this Agreement and any zoning ordinance adopted by the City Council relating to the Property, this Agreement will prevail except as expressly agreed in writing to the contrary by the Parties.

2.4 Development Standards Revisions and Waivers.

(a) Until the Property is annexed and zoned by the City, the Mayor or a designee may administratively approve minor revisions to the Development Standards, including without limitation the following: (i) an increase in the height of any structure by five percent or less; (ii) a setback reduction of ten percent (10%) or less; (iii) an increase in lot coverage of five percent (5%) or less; and (iv) a reduction in off-street parking of five percent (5%) or less.

(b) The City Council may waive strict compliance with the Development Standards on a case-by-case basis when Owner demonstrates, to the reasonable satisfaction of the City Council, that the requested waiver: (i) is not contrary to the public interest; (ii) does not cause injury to adjacent property; and (iii) does not materially adversely affect the quality of development.

(c) This Agreement may be amended by Owner and the City to revise the Development Standards.

2.5 Subdivision Regulations Revisions and Waivers.

(a) The Mayor or a designee may administratively approve minor revisions to the Subdivision Regulations, including without limitation the following: (i) administrative requirements such as number of copies required for submittals, sheet size requirements, certification statements, etc.; (ii) construction plan requirements, standard details and specifications for construction, etc.

(b) The City Council may waive strict compliance with the Subdivision Regulations on a case-by-case basis when Owner demonstrates, to the reasonable satisfaction of the City Council, that the requested waiver: (i) is not contrary to the public interest; (ii) does not cause injury to adjacent property; and (iii) does not materially adversely affect the quality of development.

(c) This Agreement may be amended by Owner and the City to revise the Subdivision Regulations.

2.6 State and Federal Requirements. Development of the Property shall be subject to ordinances that the City is required to adopt, from time to time, by state or federal law; provided, however, if such state or federal laws allow the City to grant exemptions to such laws for which the Property qualifies and the City finds that the exemptions will protect the public health, safety and welfare, then the City may take action necessary to evidence such exemptions. Nothing in this section constitutes a waiver of Owner's right to claim that a City ordinance required by state



or federal: (A) does not apply to the Property based on the "vested rights" of Owner, whether such rights arise under Chapter 43, as amended, or Chapter 245, as amended, Texas Local Government Code; (B) does not apply to the Property based on any other legal or equitable theory, whether based on existing or future common-law or state or federal statutes; or (C) constitutes an illegal exaction or a "taking" without compensation.

## **2.7 Conflicts.**

(a) In the event of any conflict between this Agreement and any other ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, whether existing on the Effective Date or hereinafter adopted, this Agreement shall control.

(b) In the event of any conflict between any Approved Plat and any of the other Governing Regulations, the Approved Plat shall control.

## **ARTICLE III** **DEVELOPMENT PROCESS**

3.1 **Jurisdiction.** Pursuant to the authority of Section 242.001(a)(3) of the Texas Local Government Code, the City shall have and exercise exclusive jurisdiction over the review and approval of preliminary and final plats, amending plats, replats and minor replats, and approval of plans for Public Infrastructure, and the County shall have and exercise no jurisdiction over such matters during the term of this Agreement.

3.2 **Plat Approval.** Subdivision of the Property shall require approval of preliminary and final plats by the City in accordance with the Governing Regulations and this Agreement. All preliminary plats submitted by Owner shall be in conformance with the Concept Plan. In the event of an inconsistency between a preliminary plat submitted by Owner and the Concept Plan, Owner shall amend the Concept Plan to conform to the preliminary plat.

## **3.3 Design and Construction of Public Infrastructure.**

(a) All Public Infrastructure constructed or caused to be constructed by the Owner on behalf of the District shall be designed and constructed in compliance with: (i) the Governing Regulations; (ii) the rules, regulations and standards of the water or wastewater CCN-holder, if applicable; (iii) the rules and regulations of the District; (iv) the rules and regulations of TCEQ; (v) the rules and regulations of the Texas Department of Transportation, where applicable; and (vi) applicable state and federal law.

(b) No construction or installation of Public Infrastructure shall begin until plans and specifications have been approved by the City. The City's engineer or other person designated by the Mayor shall approve the plans or provide written comments describing deficiencies in the plans within ten (10) business days after submittal of plans to the City, including the first submittal and each subsequent submittal. If written comments are not provided by the City within the prescribed timeframe, plans shall be deemed to be approved by the City.

3.4 **Inspection of Public Infrastructure.** The District's engineer shall inspect and test Public Infrastructure for compliance with TCEQ requirements and the Governing Regulations.

The District's engineer shall provide copies weekly of his or her reports to the Mayor or designee for comment, which comments, if any, shall be provided to the District's engineer on a timely basis. The City has the right, but not the obligation, to inspect and test the Public Infrastructure during reasonable business hours at the City's expense. In the event that the City's inspector determines that Public Infrastructure does not comply with the Governing Regulations, the City shall provide Owner with a written description of the City's inspector's report detailing such noncompliance by 5:00 p.m. on the next business day after the City's inspection. The District's engineer will re-inspect the Public Infrastructure in question and provide a copy of his or her report to the Mayor or designee.

### **3.5 Building Permits; Fees; Inspection of Structures.**

(a) No permanent building designed or intended for human occupancy or use (each, a "Structure") shall be constructed on the Property until a permit is issued certifying that the plans and specifications for the Structure are in compliance with the Building Codes and Development Standards (a "Building Permit"). At the City's option, Building Permits may be issued by: (i) a City employee as if the Property were located in the City's corporate limits; or (ii) an independent, certified, and state-licensed inspector retained by Owner on behalf of the District, subject to approval by the City, who has agreed in writing to be bound by this Agreement (a "Certified Inspector").

(b) A Building Permit shall not be issued for a Structure unless a final plat has been recorded for the lot on which the Structure will be constructed, provided, however, a Building Permit shall be issued for a model home prior to the recordation of a final plat if the necessary Public Infrastructure is in place to provide the model home with adequate access and water for emergency responses. No model home may be sold to an End-Buyer, as defined in **Section 11.1**, until a final plat including the lot has been recorded.

(c) Each Structure shall be inspected for compliance with the Building Permit issued for the Structure. At the City's option, inspections may be performed by: (i) a City employee as if the Property were located in the City's corporate limits; or (ii) a Certified Inspector.

(d) All costs relating to issuance of Building Permits and inspection of Structures shall be paid by the builder constructing the Structure or by the owner of the property on which the Structure is constructed. If the City elects to have such services performed by a City employee, the City shall charge Building Permit Fees pursuant to **Section 4.3**. If such services are performed by a Certified Inspector, fees shall be charged in accordance with the agreement between the City, Owner and the Certified Inspector.

(e) No model home may be sold to or occupied by an End-Buyer until the garage space (if used for a sales office) has been converted for use as a garage.

### **3.6 Certificates of Occupancy.**

(a) No Structure (including a model home used for a sales office) shall be occupied until a certificate has been issued certifying that the Structure has been constructed in compliance with the Building Codes and Development Regulations (a "Certificate of Occupancy"). At the City's option, Certificates of Occupancy may be issued by: (i) a City employee as if the Property were located in the City's corporate limits; or (ii) a Certified Inspector.

(b) All costs relating to Certificates of Occupancy shall be paid by the builder constructing the Structure or by the owner of the property on which the Structure is being constructed. If the City elects to have Certificates of Occupancy issued by a City employee, the City shall charge Building Permit Fees pursuant to Section 4.3. If inspections are performed by a Certified Inspector, fees shall be charged in accordance with the agreement between the City, Owner and the Certified Inspector.

### 3.7 Records and Reports.

(a) Each Certified Inspector shall maintain a permanent record of all Building Permits and Certificates of Occupancy issued and all inspections performed pursuant to Sections 3.5 and 3.6. All such records shall be kept in a form reasonably approved by the City and as required by Owner on behalf of the District, the TCEQ, and the Attorney General and shall be available for copying by Owner on behalf of the District or by the City.

(b) Each Certified Inspector shall provide a monthly report to the City and Owner (by the 15th day of each month) identifying Building Permits and Certificates of Occupancy issued by the inspector and all inspections performed during the previous calendar month, including, but not limited to, the street address of the Structure and the name and telephone number of the builder's contact person.

(c) Records of Building Permits and Certificates of Occupancy issued and inspections performed pursuant to Sections 3.5 and 3.6 by a City employee shall be maintained by the City in the ordinary course of business and shall be available for copying by Owner on behalf of the District.

### 3.8 Scheduling of Inspections.

(a) Owner may terminate any Certified Inspector if such Certified Inspector fails to inspect a Structure within two (2) business days after receipt of a request by or on behalf of Owner for such inspection, and such failure occurs more than twice in any 30-day period. If Owner and the City fail to approve a replacement Certified Inspector within five (5) business days, Owner may approve a replacement Certified Inspector.

(b) In the event that a City employee or Certified Inspector fails to inspect a Structure within two (2) business days after receipt of a request by or on behalf of Owner for such inspection, and such failure occurs more than twice in any 30-day period, Owner may, at Owner's option, retain a third party inspector to perform all subsequent inspections from a list preapproved by the City, which approval shall not be unreasonably delayed or denied. If the City fails to perform an inspection within two (2) business days and offers Owner an alternative date for the inspection, no fees previously collected by the City for such inspection shall be refunded by the City.

### 3.9 Public Safety Services.

(a) Owner shall cause the District to provide police, fire, and emergency medical services to the Property, either directly (pursuant to Chapter 49, Texas Water Code) or indirectly through interlocal agreements between the District and the City, the County, or other provider of

such service. The level at which service will be provided shall be consistent with service provided to other areas of the City with similar topography, land use and population density.

(b) The District shall have the right to provide services or choose third party provider(s) of services as long as the level of service provided is consistent with the City's level of service to areas of the City with similar topography, land use and population density. Owner shall recommend to District officials that they give the City the opportunity to provide police, fire and emergency medical services to the Property, provided the City can provide the services on equivalent terms and conditions on which such services can be provided by the District or other third party provider. Prior to submittal by Owner to the City of a final plat for any residential lots on the Property, Owner and officials of the District, after consulting with the City, shall determine public safety service needs for the Property, including without limitation service levels, capital improvements needed to provide the services, cost of service, phasing of services, and the City's capability and willingness to provide such services at a competitive rate.

#### **ARTICLE IV** **DEVELOPMENT CHARGES**

4.1 **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 (the "**Plat Review Fees**") according to the fee schedule adopted by the City Council and in effect on the date of submittal of each plat application. The fee schedule applicable to the Property shall be uniformly applicable to all development within the corporate limits of the City.

4.2 **Plan 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 review of plans and specifications for Public Infrastructure (the "**Plan Review Fees**") according to the fee schedule adopted by the City Council and in effect on the date of submittal of each set of plans and specifications. The fee schedule applicable to the Property shall be uniformly applicable to all development within the corporate limits of the City.

4.3 **Building Permit Fees.** If City employees provide inspection services pursuant to **Section 3.5** and/or **Section 3.6**, the City may charge reasonable fees for issuance of Building Permits, inspection of Structures, and issuance of Certificates of Occupancy, as applicable, according to the fee schedule adopted by the City Council (the "**Building Permit Fees**"). The Building Permit Fees may be amended by the City from time to time but shall not exceed fees for the same or similar services applicable within the City's corporate limits.

4.4 **Impact Fees.** The City currently does not collect water or wastewater impact fees pursuant to Chapter 395, Texas Local Government Code ("**Impact Fees**"). In the event the City adopts Impact Fees after the Effective Date and such Impact Fees are applicable to the Property, Owner will be entitled to credit against the Impact Fees for the Public Infrastructure to the full extent permitted by Chapter 395. With the exception of the Impact Fees, the City may not require the payment of any capital recovery fees, charges, or assessments of any kind in connection with the development of the Property unless agreed to by the Parties in writing.

4.5 Tap Fees. Tap or service connection fees for water or wastewater service provided within the Property by the City, excluding Impact Fees as herein defined ("Tap Fees"), shall be the same as if the services are provided within the City's corporate limits.

4.6 Exclusive Fees. Except for Plat Review Fees, Plan Review Fees, Building Permit Fees, Impact Fees, and Tap Fees, no other fees or charges of any kind are due and payable to the City in connection with the development of the Property, unless Owner and the City identify additional fees in writing.

## **ARTICLE V**

### **PUBLIC INFRASTRUCTURE; RETAIL UTILITY SERVICE**

5.1 Retail Water Service; Construction of Infrastructure. Retail water service to the Property, as developed in accordance with this Agreement, will be provided by the City at a reasonable rate, in accordance with this Section 5.1. The City shall be obligated to provide retail water service to customers within the Property included within the City's water CCN as of the Effective Date and within the portion of the Property that is not subject to a water CCN as of the Effective Date, provided however that the Owner has constructed all the necessary and required water infrastructure required for the City to provide water service to the Property, and that such infrastructure has been conveyed to the City in accordance with Section 5.3(a) or the City is otherwise authorized to use such infrastructure in accordance with Section 5.3(b). The Parties will coordinate with Elmont Farmington Water Supply Corporation and holders of water CCN's for the Adjacent Property with respect to water service for the Property and the Adjacent Property in order to maximize efficiency in designing and constructing off-site and on-site infrastructure and providing retail water service at a uniform level of service and in a cost-effective manner. Owner, on behalf of the District, shall design and construct or cause to be designed and constructed Public Infrastructure as needed to provide retail water service for the proposed development of the Property in a cost-effective manner.

5.2 Retail Wastewater Service. Retail wastewater service to the Property will be provided by the City, the District, or other provider with the ability to provide retail wastewater service to the Property, as developed in accordance with this Agreement, at a reasonable rate. The City shall have the first option over the District, or other provider, to provide retail wastewater service to the Property, provided the City can provide the service on equivalent terms and conditions on which such service can be provided by the District or other third party provider. If the City declines to be the retail wastewater provider, Owner may obtain wastewater service from the District or other provider. The Parties will coordinate with holders of wastewater CCN's covering any portion of the Property with respect to wastewater service for the Property and the Adjacent Property in order to maximize efficiency in designing and constructing off-site and on-site infrastructure and providing retail wastewater service at a uniform level of service and in a cost-effective manner. The City agrees not to oppose a request for expansion or issuance of a CCN to provide retail wastewater service to any uncertificated portion of the Property. Upon identifying a retail wastewater service provider for the Property, Owner, on behalf of the District, shall design and construct or cause to be designed and constructed Public Infrastructure as needed to provide retail wastewater service for the proposed development of the Property in a cost-effective manner.

5.3 Dedication, Ownership and Maintenance of Public Infrastructure; Capacity.

(a) Upon inspection, approval, and acceptance by the City, Owner shall cause the District to convey to the City legal title to water and/or wastewater infrastructure constructed within the boundaries of a CCN held by the City or to be utilized by the City in providing retail water and/or wastewater service, as applicable, to all or any portion of the Property; however, the District shall have a continuing right to require the City to utilize a portion of the capacity in such Public Infrastructure equal to the capacity funded by or on behalf of such District, up to the capacity necessary to serve the Property, which capacity shall be made available by the City at all times as necessary to provide water and wastewater service to customers within such District. The City may refuse to approve and accept water and/or wastewater infrastructure that is not designed and constructed in accordance with the Governing Regulations. Ownership of all other Public Infrastructure, including without limitation roads, drainage, and water and wastewater infrastructure not located in a CCN held by the City or used by the City to provide retail water or wastewater service shall be retained by the District and may be conveyed by the District at its discretion; provided, however, that prior to acceptance of any Public Infrastructure by the District, Owner shall cause the District to covenant that no Public Infrastructure shall be conveyed or assigned by the District to any person or entity that is not a political subdivision of the State of Texas or a holder of a CCN for the applicable area in which such Public Infrastructure is located. The City has the option of refusing acceptance of any Public Infrastructure (with the exception of water and/or wastewater infrastructure constructed within the boundaries of a CCN held by the City or to be utilized by the City in providing retail water and/or wastewater service, as applicable), provided, however, upon annexation of all or any portion of the Property for full purposes, the City shall accept all Public Infrastructure located within the annexed area. The City shall operate and maintain all Public Infrastructure conveyed to and accepted by the City, at the City's expense.

(b) In the event it is ever finally determined by a court of proper jurisdiction that the District is not authorized by law to convey legal title to all or any portion of the Public Infrastructure to the City, title to such Public Infrastructure shall automatically revert to the District. Thereafter, the City shall be entitled to utilize such Public Infrastructure in accordance with the terms of this Agreement, for a payment of \$1.00 per year.

(c) Owner shall cause the District to operate and maintain the Public Infrastructure constructed on the Property [with the exception of Public Infrastructure conveyed to the City pursuant to **Section 5.3(a)**] in accordance with industry standards and in compliance with state regulations, generally applicable City and County standards, and that certain Agreement Between the City of Dorchester, Grayson County, Walton Texas, LP, and Walton International Group (USA), Inc. for Road Repairs dated March 8, 2011.

**5.4 Construction of Oversized Infrastructure.** At the City's request, Owner shall cooperate with the City to design and construct Oversized Infrastructure to serve future development outside the boundaries of the Property. If the City elects to request Owner to design and construct Oversized Infrastructure to serve future development outside the boundaries of the Property, the City shall be responsible for all design and construction costs associated with oversizing of the Public Infrastructure in excess of infrastructure needed to serve the Property. Nothing herein shall require the City to request Owner to design and construct Oversized Infrastructure or to require Owner to fund the design or construction of Oversized Infrastructure.

5.5 Rates. The City shall provide retail water and wastewater service to portions of the Property within the City's CCN at the rates established by the City Council for service within the City's corporate boundaries, as amended from time to time.

5.6 Easements. Easements within the Property that are necessary for the installation of the Public Infrastructure will be granted or acquired by Owner and dedicated jointly to the District and the City by plat, at no cost to the District and the City.

## **ARTICLE VI** **TERM OF AGREEMENT**

The term of this Agreement shall be 15 years after the Effective Date unless extended by mutual agreement of Owner and the City (as extended, the "Term"); provided, however, Owner may terminate this agreement if an election to confirm creation of the District is not conducted on or before December 1, 2013.

## **ARTICLE VII** **JURISDICTIONAL STATUS**

7.1 Full Purpose Annexation. The City shall not annex land within a District for full purposes any earlier than the first to occur of: (a) the date that construction of water, sanitary sewer, drainage and road facilities to serve 95% of such District is complete and the District has issued bonds to reimburse the cost of the Public Infrastructure; (b) for the original District, 15 years after the Effective Date; (c) for subsequently formed Districts resulting from division of the original District, 15 years after the date a first plat for any portion of property in such subsequently formed District is approved by the City; or (d) the dissolution of such District (other than as a result of annexation by the City). If all of any portion of the Property is annexed earlier than fifteen (15) years from the Effective Date, the City shall not prevent Owner from using such Property during the Term (or thereafter pursuant to any vested rights owner may then have) in a manner consistent with the Governing Regulations.

7.2 Consent to Full Purpose Annexation. OWNER AND ALL FUTURE OWNERS OF THE PROPERTY (INCLUDING END-BUYERS) AND DEVELOPERS IRREVOCABLY AND UNCONDITIONALLY CONSENT TO THE FULL PURPOSE ANNEXATION OF THE PROPERTY INTO THE CORPORATE LIMITS OF THE CITY IN ACCORDANCE WITH THIS AGREEMENT AND WAIVE ALL OBJECTIONS AND PROTESTS TO SUCH ANNEXATION. THIS AGREEMENT SHALL SERVE AS THE PETITION OF OWNER AND ALL FUTURE OWNERS TO ANNEXATION OF THE PROPERTY FOR FULL PURPOSES IN ACCORDANCE WITH THIS AGREEMENT. THIS COVENANT SHALL RUN WITH THE LAND AND SHALL BE BINDING ON ALL CURRENT AND FUTURE OWNERS OF ALL OR ANY PART OF THE PROPERTY. OWNER SHALL RECORD THE NOTICE IN THE FORM ATTACHED AS **EXHIBIT H** IN THE GRAYSON COUNTY REAL PROPERTY RECORDS WITHIN 30 DAYS AFTER THE EFFECTIVE DATE AND PRIOR TO CONVEYING ANY PORTION OF THE PROPERTY.

7.3 Limited Purpose Annexation. Owner agrees that the City shall have the right to annex those areas of the Property that are intended for retail development for the sole and limited purpose of allowing the City to impose sales and use taxes within the boundaries of such retail

areas pursuant to Section 43.0751 of the Texas Local Government Code. The terms and conditions upon which such limited purpose annexations may occur are set forth in the Strategic Partnership Agreement attached as Exhibit I. No limited purpose annexation pursuant to the Strategic Partnership Agreement shall affect, in any way, the ETJ status of the Property; and, notwithstanding any limited purpose annexation, the areas annexed, as well as the remainder of the Property, shall continue to be located within the ETJ of the City for purposes of this Agreement.

## **ARTICLE VIII** **CONSENT TO DISTRICT**

8.1 Consent to Creation of District. This Agreement constitutes the irrevocable and unconditional consent of the City to the creation of one or more municipal utility districts covering the Property or any portion thereof pursuant to the authority of Article III, Section 52, and Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54, Texas Water Code, as amended (each, whether one or more, a "District") by act of the Texas Legislature or by the TCEQ. If more than one District is created, the City further consents to divisions of the District and to boundary adjustments among the Districts in the form of exclusions and additions of land within the Property.

8.2 Consent Resolutions; Other Documents. The City agrees to adopt such further resolutions and execute such further documents as may reasonably be requested by Owner, TCEQ, the Attorney General, or any District to evidence the City's consents as set forth in this Agreement and in the Consent Resolution.

8.3 No Limitation of Powers. Nothing in this **Article VIII** is intended to limit, impair, or conflict with the authority of or powers granted to a municipal utility district by the Texas Constitution, Texas Water Code, Texas Local Government Code, or any other current or future statute applicable to such districts.

8.4 Full Satisfaction. The consents contained in this **Article VIII** and in the Consent Resolution (the "District Consents") are given by the City: (a) in full satisfaction of any requirements for district consents contained in any statute or otherwise required by law, rule, regulation or policy including, but not limited to, consents required by the Texas Water Code, as amended, the Texas Local Government Code, as amended, any rules, regulations, or policies of the TCEQ, or any rules, regulations, or policies of the Texas Attorney General; (b) with the understanding that the District Consents are irrevocable and cannot be withdrawn or modified in any way by the City or by any action of the City Council without the prior written approval of Owner; (c) with the understanding that Owner has relied on the District Consents to Owner's material detriment and but for the District Consents Owner would not have entered into this Agreement; and (d) with the understanding that the District Consents shall not be affected by: (i) any default under this Agreement, whether by Owner or any other person or entity that is or hereafter becomes bound by this Agreement; (ii) any other act or omission by Owner or any other person or entity, whether or not related to this Agreement or the Property; or (iii) any act or omission by the District, whether or not related to this Agreement or the Property.



**ARTICLE IX**  
**EVENTS OF DEFAULT; REMEDIES**

9.1 Events of Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within 30 business days after it is due.

9.2 Remedies. IF A PARTY IS IN DEFAULT, THE AGGRIEVED PARTY MAY, AT ITS OPTION AND WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY UNDER THIS AGREEMENT, SEEK ANY RELIEF AVAILABLE AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, AN ACTION UNDER THE UNIFORM DECLARATORY JUDGMENT ACT, SPECIFIC PERFORMANCE, MANDAMUS, AND INJUNCTIVE RELIEF. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL:

- (a) entitle the aggrieved Party to terminate this Agreement; or
- (b) entitle the aggrieved Party to suspend performance under this Agreement unless the portion of the Property for which performance is suspended is the subject of the default (for example, the City shall not be entitled to suspend its performance with regard to the development of "Tract X" by "Developer A" based on the grounds that Developer A is in default with respect to any other tract or based on the grounds that any other developer is in default with respect to any other tract); or
- (c) adversely affect or impair the current or future obligations of the City to provide water or sewer service (whether wholesale or retail) or any other service to any developed portion of the Property or to any undeveloped portion of the Property unless the undeveloped portion of the Property is the subject of the default; or
- (d) entitle the aggrieved Party to seek or recover monetary damages of any kind; or
- (e) adversely affect or impair the effectiveness or validity of any consents given by the City in this Agreement or in the Consent Resolution to the creation of the District; or
- (f) adversely affect or impair the current or future rights, powers or authority of the District (including, but not limited to, the issuance of bonds) or the day-to-day administration of any of such districts; or
- (g) adversely affect or impair the continuation of the ETJ status of the Property and its immunity from annexation as provided by this Agreement and the Consent Resolution; or

(h) limit the Term.

9.3. Governmental Powers; Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities, or rights except the City waives its governmental immunity from suit and immunity from liability as to any action brought by a Party (or by the District) to pursue the remedies available under this Agreement, but only to the extent necessary to pursue such remedies. Nothing in this section shall waive any claims, defenses or immunities that the City has with respect to suits against the City by persons or entities other than the District or a Party to this Agreement.

## **ARTICLE X**

### **ASSIGNMENT AND ENCUMBRANCE**

10.1 Assignment by Owner to the District. Owner has the right to assign to the District those portions of this Agreement concerning the provision of water and/or sewer service to the Property and the design, construction, installation, maintenance, and repair of any Public Infrastructure. Thereafter, for the limited purposes of such assignment, the District shall be considered an "Assignee," and therefore a Party, for purposes of this Agreement. Each assignment shall be in writing executed by Owner and the District and shall obligate the District to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to all Parties within 15 days after execution. Provided that the District assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement as to the Property or portion of the Property in question, the assigning party will be released from any rights and obligations under this Agreement as to the Property involved in such assignment, effective upon receipt of the assignment by the City. It is specifically intended that this Agreement and all terms, conditions, and covenants herein shall survive a transfer, conveyance or assignment occasioned by the exercise of foreclosure of lien rights to a creditor or a party hereto, whether judicial or non-judicial, as evidenced by execution of this Agreement by all lienholders against the Property as of the Effective Date subordinating such liens to this Agreement. No assignment by Owner shall release Owner from any liability resulting from an act or omission by Owner that occurred prior to the effective date of the assignment. Owner shall maintain written records of all assignments made by Owner to the District, including a copy of each executed assignment, and, upon written request from any Party or Assignee, shall provide a copy of such records to the requesting person or entity.

10.2 Assignment by Owner to Successor Owners. Owner has the right (from time to time without the consent of the City, but upon written notice to the City) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Owner. Each assignment shall be in writing executed by Owner 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. A copy of each assignment shall be provided to all Parties within 15 days after execution. Provided that the successor owner assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement as to the Property or portion of the Property in question, the assigning party will be released from any rights and obligations under this Agreement as to the Property involved in such assignment,

effective upon receipt of the assignment by the City. It is specifically intended that this Agreement and all terms, conditions, and covenants herein shall survive a transfer, conveyance or assignment occasioned by the exercise of foreclosure of lien rights to a creditor or a party hereto, whether judicial or non-judicial, as evidenced by execution of this Agreement by all lienholders against the Property as of the Effective Date subordinating such liens to this Agreement. No assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment. Owner shall maintain written records of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice information as required by this Agreement, and, upon written request from any Party or Assignee, shall provide a copy of such records to the requesting person or entity.

10.3 Assignment by the City. The City shall not assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of the City under this Agreement, without the prior written approval of Owner and the District.

10.4 Encumbrance by Owner and Assignees. Owner 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 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 (hereinafter defined) information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement and shall be given a reasonable time to do so in addition to the cure periods otherwise provided to the defaulting Party by this Agreement; and the City agrees to accept a cure offered by the lender as if offered by the defaulting Party. 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.

10.5 Encumbrance by City. The City shall not collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of its rights, title, or interest under this Agreement without Owner's prior written consent.

10.6 Assignees as Parties. An Assignee shall be considered a "Party" for the purposes of this Agreement.

**ARTICLE XI**  
**RECORDATION, RELEASES, AND ESTOPPEL CERTIFICATES**

11.1 **Binding Obligations.** Pursuant to the requirements of Section 212.172(c) of the Texas Local Government Code, this Agreement and all amendments hereto (including amendments to the Concept Plan) shall be recorded in the deed records of the County. In addition, all assignments to this Agreement shall be recorded in the deed records of the County. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns permitted by this Agreement and upon the Property; however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any End-Buyer except for land use and development regulations that apply to specific lots. For purposes of this Agreement, the Parties agree: (a) that the term "**End-Buyer**" means any, tenant, user, occupant, or owner that is intended to be a final user, of a fully developed and improved lot and does not include a builder; (b) that the term "fully developed and improved lot" means any lot, regardless of proposed use, for which a final plat has been approved by the City and recorded in the deed records and a certificate of occupancy has been issued or a final inspection has been completed, as applicable, for a building(s) or structure(s) constructed on the lot; and (c) that the term "land use and development regulations that apply to specific lots" means all of the Governing Regulations except the Public Infrastructure and Retail Utility Service provisions of Article V.

11.2 **Releases.** From time to time upon written request of Owner or the District, the Mayor or designee shall execute, in recordable form, a release of this Agreement if the requirements of this Agreement have been met, subject to the continued application of the Building Codes and Development Regulations.

11.3 **Estoppel Certificates.** From time to time upon written request of Owner or the District, the Mayor or designee will execute a written estoppel certificate identifying any obligations of Owner under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; and stating, to the extent true, that to the best knowledge and belief of the City, Owner is in compliance with its duties and obligations under this Agreement.

**ARTICLE XII**  
**ADDITIONAL PROVISIONS**

12.1 **Recitals.** The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council, and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

12.2 **Notices.** All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) (a "**Notice**") shall be in writing, shall be signed by or on behalf of the Party giving the Notice, and shall be effective as follows: (a) on or after the 10th

business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by FAX; (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed); or (c) otherwise on the day actually received by the person to whom the Notice is addressed by delivery in person or by regular mail. Notices given pursuant to this section shall be addressed as follows:

To the City:

City of Dorchester  
Attn: Mayor  
508 W. Main  
Dorchester, TX 75058  
FAX: 903-476-0172

With a copy to:

Emily Rogers  
Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expressway  
Building One, Suite 300  
Austin, TX 78746  
FAX: 512-320-5638

To Owner:

Walton Texas LP  
c/o Walton Development & Management (USA), Inc.  
1445 Ross Ave., Suite 4775  
Dallas, Texas 75202  
Attn: Matt Torbit

With a copy to:

Walton Development & Management (USA), Inc.  
4800 N. Scottsdale Road, Suite 4400  
Scottsdale, AZ 85251  
Attn: Tim Terrill  
FAX: 480-586-9371

Walton International Group (USA), Inc.  
4800 N. Scottsdale Road, Suite 4400  
Scottsdale, AZ 85251  
Attn: Wayne G. Souza, General Counsel  
FAX: 602-224-8933

Marcella Olson  
Shupe Ventura Lindelow & Olson, PLLC  
500 Main Street, Suite 800  
Fort Worth, Texas 76110  
FAX: 214-329-9258

**12.3 Reservation of Rights.** THIS AGREEMENT CONSTITUTES A "PERMIT" WITHIN THE MEANING OF CHAPTER 245, TEXAS LOCAL GOVERNMENT CODE. EXCEPT AS PROVIDED IN THIS SECTION, OWNER DOES NOT, BY ENTERING INTO THIS AGREEMENT, WAIVE (AND OWNER EXPRESSLY RESERVES) ANY RIGHT THAT OWNER MAY NOW OR HEREAFTER HAVE WITH RESPECT TO ANY CLAIM: (A) OF "VESTED" OR "PROTECTED" DEVELOPMENT OR OTHER PROPERTY RIGHTS ARISING FROM CHAPTERS 43 OR 245, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, OR OTHERWISE ARISING FROM COMMON LAW OR OTHER STATE OR FEDERAL LAWS; (B) THAT THE APPLICATION OF THE IMPACT FEES TO THE DEVELOPMENT OF THE PROPERTY VIOLATES CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, OR ANY OTHER LOCAL, STATE, OR FEDERAL LAW; OR (C) THAT AN ACTION BY THE CITY CONSTITUTES A "TAKING" OR INVERSE CONDEMNATION OF ALL OR ANY PORTION OF THE PROPERTY OR AN ILLEGAL EXACTION; PROVIDED, HOWEVER, IF AN IMPROVEMENT IS SHOWN ON THE OWNER'S CONCEPT PLAN, AS SUBMITTED OR AS SUBSEQUENTLY AMENDED BY OWNER, OWNER WAIVES ANY RIGHT OR CLAIM OF A "TAKING", EXACTION OR REIMBURSEMENT FOR COSTS INCURRED IN CONNECTION WITH SUCH IMPROVEMENT. THE CITY SHALL NOT BE REQUIRED TO DETERMINE ROUGH PROPORTIONALITY OR NECESSITY AS PROVIDED FOR IN SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE FOR ANY IMPROVEMENTS SHOWN ON THE CONCEPT PLAN, AS SUBMITTED OR AS SUBSEQUENTLY AMENDED BY OWNER, OR OTHERWISE PROPOSED BY OWNER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OWNER DOES NOT WAIVE (AND EXPRESSLY RESERVES) ANY SUCH CLAIMS (AS TO VESTED OR PROTECTED DEVELOPMENT AND A TAKING WITHOUT COMPENSATION AND ILLEGAL EXACTION) THAT RESULT FROM THE BUILDING CODE AMENDMENTS, STATE AND FEDERAL REQUIREMENTS, AND OTHER CITY REGULATIONS DESCRIBED IN ARTICLE II.

**12.4 Manufactured Housing.** Notwithstanding any other provision of this Agreement to the contrary, HUD-certified manufactured homes may be located within the Property, from time to time, for any purpose necessary for the creation or administration of the District (including, but not limited to, providing qualified voters within the District or qualifying persons to serve on the board of directors of the District). Owner will notify the City of the location of, make and model of, HUD number for, and 911 address of each home within five (5) days after the home is occupied. Manufactured homes permitted by this Agreement: (a) are not required to be located on a platted lot; (b) do not require a Building Permit; (c) do not require a Certificate of Occupancy; (d) do not otherwise have to comply with the Governing Regulations; (e) do not require any permit or other approval by the City; and (f) will be removed within sixty (60) days when no longer needed for the creation or administration of the District. Manufactured homes permitted by this Agreement shall, however, be subject to all permits or approvals otherwise required by the County; and the City shall not oppose the issuance of such permits or approvals by the County.

**12.5 Interpretation.** The Parties acknowledge that each of them has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this

Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for or against any Party, regardless of which Party originally drafted the provision.

**12.6 Authority and Enforceability.** The City represents and warrants that this Agreement has been approved by the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. Owner represents and warrants that this Agreement has been approved by appropriate action of Owner, and that the individuals executing this Agreement on behalf of Owner have been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions and that the performance by the Parties under this Agreement is authorized by Section 212.171, et. seq. of the Texas Local Government Code.

**12.7 Entire Agreement; Severability.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties. Without limiting the generality of the foregoing, (y) if it is determined that, as of the Effective Date, Owner does not own any portion of the Property, this Agreement shall remain in full force and effect with respect to all of the Property that Owner does then own, and (z) if it is determined, as of the Effective Date, that any portion of the Property is not within the City's ETJ, this Agreement shall remain in full force and effect with respect to all of the Property that is then within the City's ETJ. If at any time after the Effective Date it is determined that any portion of the Property is no longer within the City's ETJ, this Agreement shall remain in full force and effect with respect to all of the Property that remains within the City's ETJ.

**12.8 Director Qualifying Lots.** Notwithstanding any other provision of this Agreement to the contrary, the conveyance, from time to time, by metes and bounds or otherwise of any portion of the Property to any person for the purpose of qualifying such person to be a member of the board of directors of the District shall not be considered a subdivision of land requiring a plat or otherwise requiring the approval of the City; provided, however, no Structure, other than manufactured housing authorized by Section 12.4, shall be constructed on any property conveyed for such purpose unless and until a plat of such portion has been approved by the City in accordance with this Agreement.

**12.9 Applicable Law; Venue.** This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in the County. Venue for any action to enforce or construe this Agreement shall be the County.

**12.10 No Waiver.** Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the

Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

12.11 No Third Party Beneficiaries. Except as otherwise provided in this **Section 12.11**, this Agreement only inures to the benefit of, and may only be enforced by, the Parties. If the District is not an Assignee, the District shall be considered a third-party beneficiary of this Agreement. An End-Buyer shall be considered a third-party beneficiary of this Agreement, but only for the limited purposes for which an End-Buyer is bound by this Agreement. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

12.12. Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance shall give Notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term "force majeure" shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the exercise of good faith, due diligence and reasonable care.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

12.14 Further Documents. Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties, expressly including without limitation approval by the City, upon approval of alignment and design for Spine Road, of an ordinance or resolution modifying the City's ETJ boundary to follow the east right-of-way line of Spine Road until the right-of-way intersects with the centerline of Squirrel Creek and to follow such creek centerline to the southern boundary of the Property, as depicted on **Exhibit B**, in order that all right-of-way for Spine Road will be included in the City's ETJ.

12.15 Exhibits. The following Exhibits are attached to this Agreement and are incorporated herein for all purposes:

Exhibit A	Metes and Bounds Description and Map of Property
Exhibit B	Map of Property, Adjacent Property and ETJ Boundary
Exhibit C	Water and Wastewater CCN Maps
Exhibit D	Consent Resolution



Exhibit E	Concept Plan
Exhibit F	Subdivision Regulations
Exhibit G	Development Standards
Exhibit H	Consent to Full Purpose Annexation
Exhibit I	Strategic Partnership Agreement
Exhibit J	Index of Definitions

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

ATTEST:

CITY OF DORCHESTER

Name: Becky Vincent  
Becky Vincent, City Secretary

By: David Smith  
David Smith, Mayor  
Date: 8/8/11

APPROVED AS TO FORM AND  
LEGALITY:

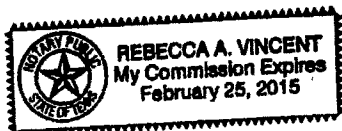
Name: Emily Rogers  
Special Counsel

STATE OF TEXAS

§  
§  
§

COUNTY OF GRAYSON

This instrument was acknowledged before me on Aug 8th, 2011, by David Smith, Mayor of the City of Dorchester, Texas on behalf of said city.



Rebecca A. Vincent  
Notary Public, State of Texas

**OWNER**

**WALTON TEXAS, LP**, a Texas limited partnership, in its capacity as owner, operator and manager, as applicable

By: Walton Texas GP, LLC, a Texas limited liability company, its General Partner

By: Walton International Group, Inc., a Nevada corporation, its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

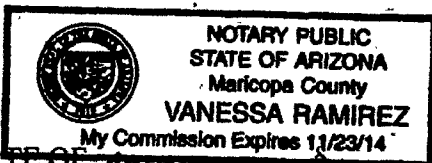
Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF Arizona §

COUNTY OF Maricopa §

This instrument was acknowledged before me on the 27<sup>th</sup> day of July, 2011, by Gordon A. Price, authorized signatory of Walton International Group, Inc., a Nevada corporation, as manager of Walton Texas GP, LLC, a Texas limited liability company, general partner of Walton Texas, LP, a Texas limited partnership, on behalf of said limited partnership.

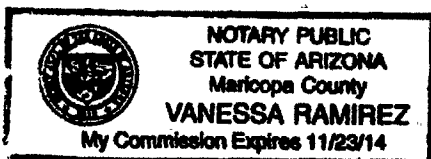


STATE OF Arizona §

COUNTY OF Maricopa §

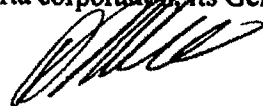
\_\_\_\_\_  
Notary Public, State of Arizona

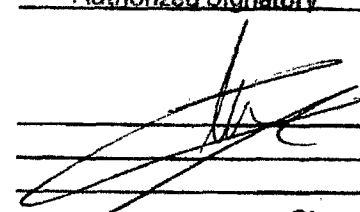
This instrument was acknowledged before me on the 27<sup>th</sup> day of July, 2011, by Wayne G. Souza, authorized signatory of Walton International Group, Inc., a Nevada corporation, as manager of Walton Texas GP, LLC, a Texas limited liability company, general partner of Walton Texas, LP, a Texas limited partnership, on behalf of said limited partnership.



\_\_\_\_\_  
Notary Public, State of Arizona

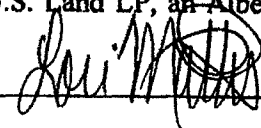
**WALTON SOUTHERN U.S. LAND LP,**  
an Alberta limited partnership  
By: **Walton Southern U.S. Land Corporation,**  
an Alberta corporation, its General  
Partner

By:   
Name: KENNETH H. PHILLIPS  
Its: Authorized Signatory

By:   
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
**Clara Chong**  
Authorized Signatory

PROVINCE OF ALBERTA §  
CITY OF CALGARY §

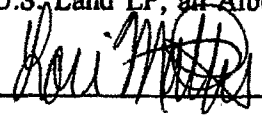
This instrument was acknowledged before me on the 28 day of July, 2011, by  
KENNETH H. PHILLIPS, authorized signatory of Walton Southern U.S. Land Corporation, an Alberta  
corporation, general partner of Walton Southern U.S. Land LP, an Alberta limited partnership,  
on behalf of said limited partnership.

  
\_\_\_\_\_  
Notary Public, Province of Alberta

**Lori A. Mattis**  
A Notary Public  
in and for the Province of Alberta  
My Appointment Expires at the  
Pleasure of the Lieutenant Governor

PROVINCE OF ALBERTA §  
CITY OF CALGARY §

This instrument was acknowledged before me on the 28 day of July, 2011, by  
CLARA CHONG, authorized signatory of Walton Southern U.S. Land Corporation, an Alberta  
corporation, general partner of Walton Southern U.S. Land LP, an Alberta limited partnership,  
on behalf of said limited partnership.

  
\_\_\_\_\_  
Notary Public, Province of Alberta

**Lori A. Mattis**  
A Notary Public  
in and for the Province of Alberta  
My Appointment Expires at the  
Pleasure of the Lieutenant Governor

**WALTON TX COTTONWOOD LIMITED  
PARTNERSHIP, an Alberta limited  
partnership**

By: Walton TX Cottonwood Corporation, an  
Alberta corporation, its General Partner

By: \_\_\_\_\_  
Name: KENNETH H. PHILLIPS  
Its: Authorized Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
**Clara Chong**  
**Authorized Signatory**

PROVINCE OF ALBERTA §

CITY OF CALGARY §

This instrument was acknowledged before me on the 28 day of July, 2011, by  
KENNETH H. PHILLIPS, authorized signatory of Walton TX Cottonwood Corporation, an Alberta  
corporation, general partner of Walton TX Cottonwood Limited Partnership, an Alberta limited  
partnership, on behalf of said limited partnership.

Lori A. Mattis

Notary Public, Province of Alberta  
**Lori A. Mattis**

A Notary Public

in and for the Province of Alberta  
My Appointment Expires at the  
Pleasure of the Lieutenant Governor

PROVINCE OF ALBERTA §

CITY OF CALGARY §

This instrument was acknowledged before me on the 28 day of July, 2011, by  
CLARA CHONG, authorized signatory of Walton TX Cottonwood Corporation, an Alberta  
corporation, general partner of Walton TX Cottonwood Limited Partnership, an Alberta limited  
partnership, on behalf of said limited partnership.

Lori A. Mattis

Notary Public, Province of Alberta

**Lori A. Mattis**

A Notary Public

27 in and for the Province of Alberta  
My Appointment Expires at the  
Pleasure of the Lieutenant Governor

2180101216594.12

WALTON USA COTTONWOOD LP, a  
Delaware limited partnership

By: Walton Cottonwood GP, LLC, a  
Delaware limited liability company,  
its General Partner

By: Walton Land Management (USA), Inc.,  
a Delaware corporation, its Manager

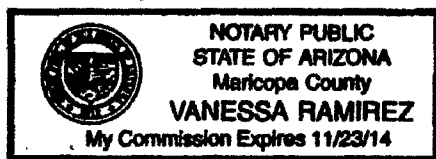
By: [Signature]  
Name: Gordon A. Price  
Its: CEO

By: [Signature]  
Name: Matt Keister  
Its: COO & TREASURER

STATE OF Arizona §

COUNTY OF Maricopa §

This instrument was acknowledged before me on the 27 day of July, 2011, by Gordon A. Price, authorized signatory of Walton Land Management (USA), Inc., a Delaware corporation, as manager of Walton Cottonwood GP, LLC, a Delaware limited liability company, general partner of Walton USA Cottonwood LP, a Delaware limited partnership, on behalf of said limited partnership.

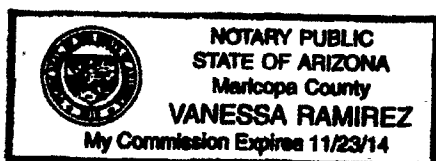


[Signature]  
Notary Public, State of Arizona

STATE OF Arizona §

COUNTY OF Maricopa §

This instrument was acknowledged before me on the 27<sup>th</sup> day of July, 2011, by Matt Keister, authorized signatory of Walton Cottonwood GP, LLC, a Delaware limited liability company, general partner of Walton USA Cottonwood LP, a Delaware limited partnership, on behalf of said limited partnership.



[Signature]  
Notary Public, State of Arizona

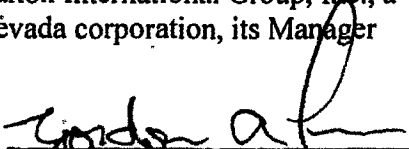
**LIENHOLDERS:**

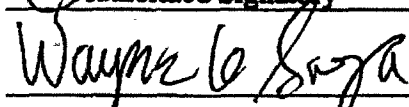
By execution of this Agreement, each lienholder subordinates its lien against the Property to this Agreement.

**WALTON TEXAS, LP**, a Texas limited partnership, in its capacity as lienholder

By: Walton Texas GP, LLC, a Texas limited liability company, its General Partner

By: Walton International Group, Inc., a Nevada corporation, its Manager

By:   
Name: Gordon A. Price  
Its: Authorized Signatory

By:   
Name: WAYNE G. SOLIZA  
Its: AUTHORIZED SIGNATORY

STATE OF Arizona §

COUNTY OF Maricopa §

This instrument was acknowledged before me on the 21<sup>st</sup> day of July, 2011, by Gordon A. Price, authorized signatory of Walton International Group, Inc., a Nevada corporation, as manager of Walton Texas GP, LLC, a Texas limited liability company, general partner of Walton Texas, LP, a Texas limited partnership, on behalf of said limited partnership.

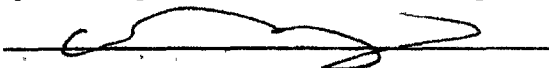


Notary Public, State of Arizona

STATE OF Arizona §

COUNTY OF Maricopa §

This instrument was acknowledged before me on the 21<sup>st</sup> day of July, 2011, by Wayne G. Soliza, authorized signatory of Walton International Group, Inc., a Nevada corporation, as manager of Walton Texas GP, LLC, a Texas limited liability company, general partner of Walton Texas, LP, a Texas limited partnership, on behalf of said limited partnership.



Notary Public, State of Arizona

**WALTON INTERNATIONAL GROUP  
(USA), INC.**, an Arizona corporation, in its  
capacity as lienholder

By: [Signature]  
Name: Gordon A. Price  
Its: CEO

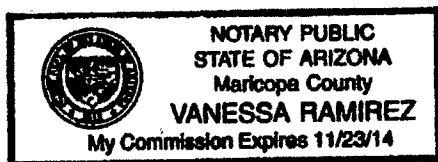
By: [Signature]  
Name: Wayne G. Souza  
Its: General Counsel and Executive V.P., Law & Corporate Secretary

STATE OF Arizona §

COUNTY OF Maricopa §

This instrument was acknowledged before me on the 21<sup>st</sup> day of July, 2011, by  
Gordon A. Price, authorized signatory of Walton International Group (USA), Inc., on behalf of  
said corporation.

[Signature]  
Notary Public, State of Arizona

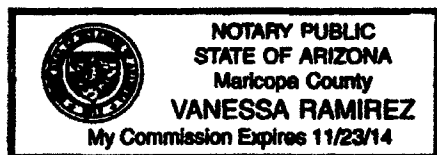


STATE OF Arizona §

COUNTY OF Maricopa §

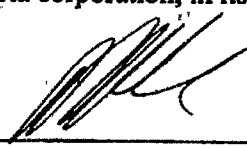
This instrument was acknowledged before me on the 21<sup>st</sup> day of July, 2011, by  
Wayne G. Souza, authorized signatory of Walton International Group (USA), Inc., on behalf of  
said corporation.

[Signature]  
Notary Public, State of Arizona





**WALTON INTERNATIONAL GROUP,  
INC.;** an Alberta corporation, in its capacity as  
lienholder

By:   
Name: KENNETH H. PHILLIPS  
Its: Authorized Signatory

By:   
Name: Clara Chong  
Its: Authorized Signatory

PROVINCE OF ALBERTA §  
CITY OF CALGARY §

This instrument was acknowledged before me on the 28 day of July, 2011; by  
KENNETH H. PHILLIPS, authorized signatory of Walton International Group, Inc., on behalf of said  
corporation.

  
Notary Public, Province of Alberta

**Lori A. Mattis**  
A Notary Public  
in and for the Province of Alberta  
My Appointment Expires at the  
Pleasure of the Lieutenant Governor

PROVINCE OF ALBERTA  
STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §  
CITY OF CALGARY

This instrument was acknowledged before me on the 28 day of July, 2011, by  
CLARA CHONG, authorized signatory of Walton International Group, Inc., on behalf of said  
corporation.

  
Notary Public, Province of Alberta

**Lori A. Mattis**  
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in and for the Province of Alberta  
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