(iv) Upon inspection and approval (or deemed approval) of the Treatment Plant Expansions by the City and the District as provided above, (A) the Treatment Plant Expansions (to the extent of any ownership by Owner or the District) will be conveyed to and accepted by the City as provided above, free of liens or other monetary encumbrances, and shall become a part of the City's wastewater collection and treatment system, and (B) subject to the one year maintenance agreement and maintenance bond, the City shall thereafter be responsible for maintenance, repair and operation of the Treatment Plant Expansions. Upon such conveyance, a complete set of as-built construction drawings shall be provided to Owner, the City and the District.

(v) It is anticipated that the Treatment Plant Expansions may create capacity ("Excess Wastewater Capacity") in the City's existing wastewater treatment facility which exceeds the additional wastewater treatment capacity necessary to serve the Full Development of the Property. In this regard, the District and/or the Owner shall be reimbursed for the amounts (the "District's Prorata Wastewater Reimbursement") calculated in the manner set forth on Exhibit P attached hereto for all Excess Wastewater Capacity utilized by and/or reserved by the City for other wastewater customers of the City for lots for which a final plat is approved by the City after the Effective Date hereof; provided, however, any lots using the Excess Wastewater Capacity as a result of the Additional Wastewater Connections used by the Owner and/or the District pursuant to Section 5.4 hereof will be excluded from the District's Prorata Wastewater Reimbursement. Such District's Prorata Wastewater Reimbursement shall be paid to the District and/or the Owner by the City within one hundred eighty (180) days after the final approval of a plat by the City containing lots which will be subject to the District's Prorata Wastewater Reimbursement. Without limiting the foregoing, the City agrees to and shall timely enact such ordinances which are necessary or appropriate to authorize and enable the City to make the District's Prorata Wastewater Reimbursements to the District and/or the Owner when and as described above. Without limiting the foregoing, the District's Prorata Wastewater Reimbursement shall be determined as follows:

(1) The methodology for calculating the District's Prorata Wastewater Reimbursement is set forth on Exhibit P attached hereto and incorporated herein by reference.

(2) The initial District's Prorata Wastewater Reimbursement shall be established by the Parties within one hundred eighty (180) days after the Effective Date based on the methodology set forth on Exhibit P.

(3) The District's Prorata Wastewater Reimbursement shall be revised based on the methodology set forth on Exhibit P on the dates, whichever are earlier, of (A) the completion of each phase of the Property, or (B) five (5) years after the Effective Date or the previous revision to the District's Prorata Wastewater Reimbursement, whichever applies.

(vi) Without limiting the foregoing, Treatment Plant Expansions will create capacity ("Unused Wastewater Capacity") in the City's existing wastewater treatment facility which will exceed the immediate requirements of the District for the Property and

will not be needed or fully utilized by the District until such time as the District's customer base is adequate to utilize such Unused Wastewater Capacity. Without limiting the foregoing, all Unused Wastewater Capacity created by the Treatment Plant Expansions will be exclusively reserved by the City to serve and for the use of the Property, provided that the City may utilize the Unused Wastewater Capacity to serve the City's other wastewater customers until the District's wastewater service demands need such Unused Wastewater Capacity. Accordingly, the City will expand or cause to be expanded its existing wastewater treatment facilities to serve and accommodate the service demands of its other wastewater customers so that the Unused Wastewater Capacity is and will be available for use by the District and the wastewater users in the Property if and when the need arises.

(vii) Any reasonable expenses incurred by the City relating to the inspection or approval of the Treatment Plant Expansions will be paid by the Owner within thirty (30) days following Owner's receipt, subject to the Owner's approval, of invoices reflecting such expenses, which approval process will not extend the time of payment by Owner to the City of reimbursable expenses. Without limiting the foregoing, if the City anticipates incurring any expenses associated with taking any such action pursuant to this Section 5.2(b), the City shall notify the Owner and the District in writing prior to taking such action, which notice shall provide an estimate of the expenses expected to be incurred by the City, and the provisions of Section 2.8(b) hereof shall apply.

(c) Property Wastewater Collection System. Owner and/or the District shall construct or cause to be constructed (in phases, as needed, based on Owner's development schedule for the Property) all wastewater collection lines and related equipment and facilities (collectively, the "Property Wastewater Collection System") that are necessary to provide retail wastewater service within the Property. Without limiting the foregoing, the following provisions shall apply to the Property Wastewater Collection System:

(i) Plans and specifications for, and all other documents submitted in connection with, the Property Wastewater Collection System shall comply with applicable regulations and the requirements of this Agreement and shall be submitted to and approved by the City (which approval shall not be unreasonably withheld or delayed) and the District. The City will cooperate fully with Owner and/or the District to approve the plans and specifications and other documents as provided above, and Owner and/or the District will provide (and dedicate to the public and/or the District) such easements or other rights-of-way within the Property as reflected or to be reflected on the final plat(s) of the Property that are reasonably necessary for the maintenance and operation of the Property Wastewater Collection System. Copies of all City and TCEQ approved plans and specifications for the Property Wastewater Collection System shall be provided to the Owner, the City and the District.

(ii) Construction contracts shall be awarded by or on behalf of the District in accordance with the competitive bidding requirements applicable to the District (including, if required, payment and performance bonds) so that costs paid or incurred under such contracts are eligible for reimbursement from the proceeds of District Bonds and/or PID Bonds and/or from other District funds generated from other District revenues

or sources. Without limiting the foregoing, Owner and/or the District will pay all reasonable costs and expenses in connection with the design and construction of the Property Wastewater Collection System. Furthermore, the City shall cooperate fully with Owner and the District to provide such documentation as may reasonably be required by Owner, the District, or the TCEQ so that the costs of the Property Wastewater Collection System paid by Owner and/or the District are eligible for reimbursement from the proceeds of District Bonds and/or PID Bonds and/or from other District funds generated from other District revenues or sources, which documentation shall include, but not be limited to, evidence of the reservation of capacity in the City's wastewater collection and treatment system and the Property Wastewater Collection System to serve the Full Development of the Property.

(iii) During construction, the City and the District will have the continuous right to inspect the Property Wastewater Collection System. The Owner will exercise good faith efforts to provide timely prior written notice to the City and the District of the performance of any and all tests. Upon completion of construction and all required tests (as applicable), the Property Wastewater Collection System shall be inspected by the City and the District within fifteen (15) days of written request by Owner, and the City and the District may object in good faith within such fifteen (15) day period to any portion of the Property Wastewater Collection System which has not been constructed substantially in accordance with the approved plans and specifications relating thereto. If the City or the District fails to deliver a written objection notice to Owner within such fifteen (15) day period, the City and/or the District, whichever applies, shall be deemed to have approved the Property Wastewater Collection System. If a written objection notice is delivered to Owner within such fifteen (15) day period, the Owner shall use reasonable good faith efforts to correct any objections within a reasonable period of time after receipt of such objection notice, and the process set forth above shall be repeated until the City and the District have approved or are deemed to have approved the Property Wastewater Collection System. Notwithstanding anything contained herein to the contrary, approval of the Property Wastewater Collection System shall not be unreasonably withheld or delayed, and objections to the Property Wastewater Collection System may only be made if they are reasonable and made in good faith and only to the extent the applicable objectionable components of the Property Wastewater Collection System are not constructed substantially in accordance with the approved plans and specifications relating thereto.

(iv) Upon inspection and approval (or deemed approval) of the Property Wastewater Collection System by the City and the District as provided above, (A) the Property Wastewater Collection System will be conveyed to the District as provided above, free of liens or other monetary encumbrances, and shall become a part of the District's wastewater collection and treatment system, and (B) the District shall thereafter be responsible for maintenance, repair and operation of the Property Wastewater Collection System. Upon such conveyance, a complete set of as-built construction drawings shall be provided to Owner, the City and District of the Property Wastewater Collection System.

(v) Any reasonable expenses incurred by the City relating to the inspection or approval of the Property Wastewater Collection System will be paid by the Owner within thirty (30) days following Owner's receipt, subject to the Owner's approval, of invoices reflecting such expenses, which approval process will not extend the time of payment by Owner to the City of reimbursable expenses. Without limiting the foregoing, if the City anticipates incurring any expenses associated with taking any such action pursuant to this Section 5.2(c), the City shall notify the Owner and the District in writing prior to taking such action, which notice shall provide an estimate of the expenses expected to be incurred by the City, and the provisions of Section 2.8(b) hereof shall apply.

Section 5.3 Fees and Charges. Except as otherwise provided herein or expressly provided in Section 2.8 or this Section 5.3, no fees, charges or assessments shall apply to or be incurred or charged in connection with the Full Development of the Property, the design and construction of the Wastewater Infrastructure Improvements, or the providing of wastewater service to serve the Full Development of the Property.

(a) Impact Fees. The City agrees that there are no capital improvements or facility expansions necessitated by or attributable to the Full Development of the Property or the design or construction of the Wastewater Infrastructure Improvements for which the City is paying the costs associated therewith, and that no City funds have been or will be expended for any improvements to provide wastewater service to the Property. Consequently, except as set forth in Section 2.8 or this Section 5.3, there are no wastewater impact fees (or other similar capital recovery fees, charges or assessments of any kind) due and payable in connection with (i) the development of any portion of the Property, (ii) the design or construction of Wastewater Infrastructure Improvements, (iii) tapping into, connecting to or using the Wastewater Infrastructure Improvements or the City's existing wastewater collection and treatment system, and/or (iv) the City's obligation to provide wastewater collection and treatment service to serve the Full Development of the Property.

(b) District Retail Wastewater Rate. The City shall charge and bill, and shall collect such charges from, the wastewater customers living in the area served by the District for wastewater usage by such customers based on the "District Retail Wastewater Rate" established in the manner set forth on Exhibit M attached hereto and incorporated herein by reference. On or before the 15th day of each month, the City shall remit to the District all amounts collected on the District's behalf since the preceding monthly payment from the City to the District. In addition, the City (i) may retain the portion of the collected amount attributable to the City Resale Wastewater Rate (as defined and established on Exhibit M attached hereto), and (ii) shall remit to the District the portion of the collected amount attributable to the District Wastewater Surcharge (as defined and established on Exhibit M attached hereto). If the City fails to collect any amounts from any wastewater customers living in the area served by the District, then the City shall, at the District's election, (A) continue to pursue collection through the use of commercially reasonable collection efforts, provided that if the City engages an outside collection service at the District's request, the costs of this collection service shall be netted out of the amounts collected by the City before any amounts are retained by the City or remitted to the District as provided above, or (B) assign such delinquent account(s) to the District for collection, in which event the City shall assist and fully cooperate with the District in the District's collection efforts. If requested by the City, the Owner and/or the District, the

agreement establishing the terms and provisions of the fees, charges and collection of such charges as set forth in this Section 5.3 shall be more specifically delineated in a separate agreement to be executed by the City, the District and the Owner.

(c) Wastewater Connection Fees. Each initial first time connection within the Property to the Property Wastewater Distribution System shall require payment to the City (by the Owner and/or the District at or prior to the time of such connection) of a connection fee (the "Wastewater Connection Fee") in the amount of One Hundred and No/100 Dollars ($100.00) per connection (or such other amount as the Owner, City and District may agree upon from time to time). The Wastewater Connection Fee (i) compensates the City for reserving to Owner and the District capacity in the City's wastewater collection and treatment system, and (ii) reimburses the City for a portion of the costs and expenses paid or incurred by the City to operate and maintain the City's wastewater collection and treatment system. Owner and/or the District shall have the right, but not the obligation, to prepay such Wastewater Connection Fees from time to time in amounts approved by the City, and the Owner and/or the District reserve the right to be reimbursed for the amount of the Wastewater Connection Fees prepaid and/or advanced by the District and/or Owner, as applicable, by collecting from each builder a per lot fee at the closing of the purchase of a lot by such builder. In this regard, the Owner and/or the District reserve the right to collect such Wastewater Connection Fees from the builder(s) at each closing of the purchase of lots by such builder(s), and both the Owner and/or District shall be entitled to retain from the amounts collected from the builder(s) that portion of such Wastewater Connection Fees prepaid and/or advanced by the Owner and/or District, as applicable. Notwithstanding the foregoing, the City may charge homeowners in the area served by the District connection and reconnection fees for new or reconnection service by such homeowners after the initial first time connection referenced above, provided that such connection and reconnection fees shall not exceed the fees charged by the City to the City's other wastewater customers for such services.

Section 5.4 Existing Treatment Capacity. The City acknowledges and agrees that, pursuant to the Prior Development Agreements, the City received Ninety Three Thousand Six Hundred and No/100 Dollars ($93,600.00) as consideration for the reservation of treatment capacity in the City's existing wastewater treatment plant to serve one hundred (100) single family equivalent unit connections. The City hereby confirms that such connections are reserved for the exclusive use by Owner and the District for the benefit of the Property and that there shall not be any Wastewater Connection Fees charged for or assessed on or in connection with the first one hundred (100) wastewater connections within the area served by the District. Without limiting the foregoing, the City hereby agrees to make available and grant to the Owner and the District, at a cost of One Hundred and No/100 Dollars ($100.00) per connection, additional single family equivalent unit connections (the "Additional Wastewater Connections") to the City's existing wastewater collection and treatment system on a first-come, first-serve basis to the extent excess capacity exists in the City's existing wastewater collection and treatment system at the time such additional wastewater connections are requested and paid for by the Owner and/or the District. In such event, the City shall not be required to pay any District Prorata Wastewater Reimbursement for any lots using the Excess Water Capacity pursuant to Section 5.2(b)(v) hereof as a result of the City not having capacity in its existing wastewater treatment system caused by the City granting the Additional Wastewater Connections to Owner and/or the District.

Section 5.5 **Amended Discharge Permit**. At no actual out-of-pocket cost to the City, the City will cooperate fully with Hunter Associates Texas, Ltd. ("Hunter Associates") in the preparation by Hunter Associates (at the sole cost and expense of Owner and/or the District pursuant to the signed agreement between Hunter Associates and the District) of an application to the TCEQ to obtain a wastewater discharge permit for the City's wastewater treatment plant, as expanded to provide treatment capacity to serve the Full Development of the Property. A complete application for such permit shall be filed by Hunter Associates with the TCEQ no later than June 30, 2005. If Hunter Associates fails to timely file the application and diligently pursue obtaining the permit, Owner and/or the District shall have the right to continue the application for, and the City shall fully cooperate with Owner and/or the District in its efforts to obtain, such discharge permit for the City.

Section 5.6 **City Wastewater Capacity.** If the City should desire Owner and/or the District to increase the capacity of and/or enhance the Wastewater Transmission Line or the Property Wastewater Collection System, or any portions or components thereof, beyond what is set forth in the plans and specifications to be approved by the City for the improvements as described in this Section 5.3 and which increases the capacity of and/or enhances the wastewater treatment facilities in order to serve any development or service needs outside the Property or for any purposes other than to serve the Full Development of the Property, the City shall notify Owner and the District in writing of the nature and extent of the desired increases in capacity and/or enhancements (the "City Wastewater Capacity Increase") within thirty (30) days after Owner and/or the District first provide plans and specifications to the City for the above described improvements affected by the City Wastewater Capacity Increase (and the City's failure to so notify Owner and the District shall waive the City's right to insist upon or request the City Wastewater Capacity Increase). If the City notifies Owner and the District within such thirty (30) day period of the City's desire for the City Wastewater Capacity Increase, then the City shall have the right, at its sole cost and expense, to cause the Wastewater Transmission Line or Property Wastewater Collection System, whichever applies, to be designed and constructed by the Owner and/or the District to include the City Wastewater Capacity Increase. The City shall pay all additional costs and expenses (the "City Wastewater Capacity Increase Costs") attributable to the City Wastewater Capacity Increase as and when due under the design and construction contracts awarded by Owner and/or the District for the applicable work and improvements. If the City fails to timely make all such payments, the Owner and/or the District shall have the right to (a) proceed with the design and construction of the Wastewater Transmission Line and Property Wastewater Collection System, whichever applies, without the City Wastewater Capacity Increase and without any liability to the City for funds spent by the City on the City Wastewater Capacity Increase, (b) design and construct the City Wastewater Capacity Increase, in which event all of the additional capacity created by the City Wastewater Capacity Increase shall belong to Owner and/or the District until all of the City Wastewater Capacity Increase Costs incurred by Owner and/or the District for such City Wastewater Capacity Increase (plus interest at the rate, whichever is less, equal to one percent (1%) per month, twelve percent (12%) per annum or the maximum rate allowed by law) have been reimbursed by the City to Owner and/or the District, whichever applies, (c) offset the unreimbursed City Wastewater Capacity Increase Costs (plus interest thereon) against any amounts due to the City for any reason in connection with the development of the Property and/or pursuant to this Agreement, and/or (d) pursue any and all remedies available at law or in equity to recover such City Wastewater Capacity Increase Costs.

ARTICLE VI
ROADWAY INFRASTRUCTURE

Section 6.1 Rose Lane Roadway Improvements. (a) Owner and/or the District shall construct or cause to be constructed improvements to that portion of Rose Lane from the intersection of Rose Lane and Stonebrook Parkway through and including the intersection of Rose Lane and King Road (the "Rose Lane Roadway Improvements") as more particularly described and/or depicted on Exhibit K attached hereto and incorporated herein by reference. Plans and specifications for, and all other documents submitted in connection with, the Rose Lane Roadway Improvements shall comply with the requirements of this Agreement and shall be submitted to and approved by the City, the District, Frisco and the County, as applicable, which approvals shall not be unreasonably withheld or delayed. The City will cooperate fully with Owner and the District to approve the plans and specifications and other documents, and copies of all approved plans and specifications shall be provided to Owner, the City and the District. Without limiting the foregoing, the following provisions shall apply with respect to the Rose Lane Roadway Improvements:

(i) Section A of the Rose Lane Roadway Improvements (as generally depicted on Exhibit K attached hereto) shall be a new 31' back to back concrete road and shall include the typical associated utilities ultimately to be specified in the plans and specifications approved by the City and the District as described above. Section A of the Rose Lane Roadway Improvements (as described in this Section 6.1(a)(i) of this Agreement) shall be constructed concurrently with development of Owner's first phase ("Phase 1") of the Property as approved by the City.

(ii) Subject to the County's and Frisco's approval and/or consent with respect to Section B of the Rose Lane Roadway Improvements (as generally depicted on Exhibit K attached hereto), such Section B shall be a new 31' back to back concrete road and shall include the typical associated utilities ultimately to be specified in the plans and specifications approved by the City and the District as described above. If the County or Frisco withholds or rejects its consent to constructing Section B of the Rose Lane Roadway Improvements as described above, then Section B shall encompass and be a 2" asphalt overlay over the existing Rose Lane paving. The Owner and/or the District agree to improve any portions of the base in Section B of Rose Lane that are not consistent with the majority of the base underlying the existing Rose Lane paving. Unless commenced earlier by the adjacent property owner, Section B of the Rose Lane Roadway Improvements (as described in this Section 6.1(a)(ii) of this Agreement) shall be commenced and completed within six (6) months following the completion of the construction of the streets, utilities and other infrastructure improvements in Owner's Phase 1 of the Property.

(iii) Section C of the Rose Lane Roadway Improvements (as generally depicted on Exhibit K attached hereto) shall encompass and be a 2" asphalt overlay over the existing Rose Lane paving and shall include the typical associated utilities ultimately to be specified in the plans and specifications approved by the City and the District as described above and, if required, approved by the County; provided, however, the stormwater drainage system may be a grade to drain system along parts of Section C of

the Rose Lane Roadway Improvements. If Owner and/or the District constructs Section C of the Rose Lane Roadway Improvements, then, subject to obtaining the approval from the County, Section C of the Rose Lane Roadway Improvements shall be commenced within ninety (90) days after the earlier of (A) completion of the development of the Owner's Phase 1, or (B) receipt by the District and Owner of written notice from the County confirming that the County's funds are available to either reimburse the Owner for, or to construct, the Section C Rose Lane Roadway Improvements.

(iv) Section D of the Rose Lane Roadway Improvements (as generally depicted on Exhibit K attached hereto) shall be a new 31' back to back concrete road, and shall expand to a 37' back to back concrete road at the intersection of Rose Lane and King Road. Section D of the Rose Lane Roadway Improvements shall also include necessary improvements to the south side of King Road to accommodate the necessary improvements to Rose Lane at the intersection of Rose Lane and King Road, and shall include typical associated utilities ultimately to be specified in the plans and specifications approved by the City and the District as described above. Section D of the Rose Lane Roadway Improvements (as described in this subsection (iv) of this Agreement) shall be commenced within thirty (30) days after the date that 150 homes in the Property have been completed as evidenced by the issuance of a final green tag, a certificate of occupancy for each of such homes or the occupancy of the 150th home to be occupied, and shall be diligently pursued to completion after commencement thereof.

(v) The City shall use best efforts to cause Frisco, the County and all other applicable governmental authorities (A) to agree to and approve the portions of the Rose Lane Roadway Improvements in Frisco and the County, as applicable, as generally described above and as to be specified in the plans and specifications approved by the City and the District as described above, and (B) to the extent necessary, enter into an inter-local agreement providing for the maintenance and, if required, operation of the Rose Lane Roadway Improvements by the various entities as described in this Section 6.1.

(b) The City represents that the Rose Lane Roadway Improvements can be constructed, and the City will use best efforts to cause the Rose Lane Roadway Improvements to be constructed, within the existing rights-of-way of Rose Lane that lies within the City. If additional rights-of-way and/or easements are absolutely necessary to construct and/or complete the Rose Lane Roadway Improvements as contemplated herein, then (i) the City will use its best efforts to obtain and provide to Owner and the District easements or other or additional rights-of-way necessary or appropriate for the construction, maintenance and operation of the Rose Lane Roadway Improvements including, but not limited to, the exercise by the City of its condemnation power and obtaining all necessary or appropriate dedications and easements from Frisco, the County and/or any other entities or persons not a Party to this Agreement, and (ii) the Owner and/or the District will reimburse the City for reasonable costs and expenses incurred by the City relating to obtaining such additional easements and rights-of-way, which reimbursements will be paid by the Owner within thirty (30) days following Owner's receipt, subject to the Owner's approval, of invoices reflecting such expenses, which approval process will not extend the time of payment by Owner to the City of reimbursable expenses. Without limiting the foregoing, if the City anticipates incurring any expenses associated with taking any

such action pursuant to this Section 6.1(b), the City shall notify the Owner and the District in writing prior to taking such action, which notice shall provide an estimate of the expenses expected to be incurred by the City, and the provisions of Section 2.8(b) hereof shall apply.

(c) Construction contracts shall be awarded by or on behalf of the City and/or the District in accordance with the competitive bidding requirements applicable to the City and/or the District (including, if required, payment, performance and maintenance bonds) so that costs paid or incurred under such contracts are eligible for reimbursement from the proceeds of District Bonds and/or PID Bonds and/or from other District funds generated from other District revenues or sources. Owner, the District and the City will pay for the Rose Lane Roadway Improvements as follows:

(i) Subject to the provisions set forth in Section 6.1(a) above and in Section 6.1(c)(ii) below, Owner and/or the District will be responsible for paying or causing to be paid all costs and expenses incurred in connection with the design and construction of the Rose Lane Roadway Improvements.

(ii) It is expressly understood and agreed that the Owner and/or the District will seek reimbursement and/or contribution from Frisco, the County, Land Advisors, Ltd. ("LAL") and the property owner adjacent to the eastern boundaries of Sections A and B of the Rose Lane Roadway Improvements for the costs and expenses incurred in connection with the Rose Lane Roadway Improvements. Without limiting the foregoing, the City will use best efforts to seek, and shall assist and fully comply with the Owner and the District in their efforts to seek, such reimbursements and/or contributions from such parties, and the City shall not waive or forego any such reimbursements or contributions from any of such parties without the prior written consent of the Owner and the District. Notwithstanding the foregoing provisions, the City will not be required to initiate litigation against any third party in order to judicially extract such reimbursements or contributions.

(c) Upon completion of each Section of the Rose Lane Roadway Improvements, such Section shall be inspected by the City, the District and any other appropriate governmental authorities within fifteen (15) days of written request by Owner, and the City and the District may object in good faith within such fifteen (15) day period to any portion of the applicable Section of the Rose Lane Roadway Improvements which has not been constructed substantially in accordance with the approved plans and specifications relating thereto. If the City or the District fails to deliver a written objection notice to Owner within such fifteen (15) day period, the City and/or the District, whichever applies, shall be deemed to have approved the applicable Section of the Rose Lane Roadway Improvements. If a written objection notice is delivered to Owner within such fifteen (15) day period, the Owner shall use reasonable good faith efforts to correct any objections within a reasonable period of time after receipt of such objection notice, and the process set forth above shall be repeated until the City, the District and other appropriate governmental authorities have approved or are deemed to have approved the applicable Section of the Rose Lane Roadway Improvements. Notwithstanding anything contained herein to the contrary, approval of the applicable Section of the Rose Lane Roadway Improvements shall not be unreasonably withheld or delayed, and objections to the applicable Section of the Rose Lane Roadway Improvements may only be made if they are reasonable and made in good faith and

only to the extent the applicable objectionable components of the applicable Section of the Rose Lane Roadway Improvements do not comply with applicable regulations or are not constructed substantially in accordance with the approved plans and specifications relating thereto.

(d) Upon inspection and approval (or deemed approval) of the applicable Section of the Rose Lane Roadway Improvements by the City, the District, and/or any other appropriate governmental authorities as provided above, the applicable Section of the Rose Lane Roadway Improvements will be conveyed to and accepted by the City, the County, the District and/or other applicable governmental authorities, as applicable.

(e) All portions of the Rose Lane Roadway Improvements shall be conveyed to the applicable grantees free of liens and other monetary encumbrances. Upon such conveyance, the Rose Lane Roadway Improvements shall become part of the applicable grantee's thoroughfare system, and thereafter shall be maintained and operated by such grantees subject to the maintenance bonds posted by the contractor. Upon such conveyances, a complete set of as-built construction drawings shall be provided to Owner and each grantee of any portion of the Rose Lane Roadway Improvements.

(f) The City shall cooperate fully with Owner and the District to provide such documentation as may reasonably be required by Owner and/or the District so that the costs of the Rose Lane Roadway Improvements paid by Owner and/or the District are eligible for reimbursement from the proceeds of District Bonds and/or PID Bonds and/or from other District funds generated from other District revenues or sources.

Section 6.2 Rose Lane Bypass and Construction Traffic. (a) If the City determines that a bypass or detour is necessary or appropriate during the construction of the Rose Lane Roadway Improvements that lie within the City, the City will provide easements or other rights-of-way necessary or appropriate to provide access to the Property and to construct a detour of and/or alternative bypass road to Rose Lane during periods of construction within the Rose Lane right-of-way including, but not limited to, the exercise by the City of its condemnation power and obtaining all necessary or appropriate easements from Frisco, the County and/or any entities or persons not a Party to this Agreement.

(b) Until completion of the Rose Lane Roadway Improvements, Owner shall contractually obligate its builders and its and their contractors to use Stonebrook Parkway for access and ingress and egress to and from the Property. In this regard, the City may provide and erect any directional signs desired or required by the City to enforce this restrictive usage and to direct such construction traffic as described above.

Section 6.3 Fees and Charges. (a) Except as otherwise provided in this Agreement or expressly provided in this Section 6.3, no fees, charges or assessments shall apply to or be incurred by Owner, or be charged by the City, in connection with or for the design or construction of the Rose Lane Roadway Improvements.

(b) Except as set forth herein, the City acknowledges and agrees that there are no impact or capital improvements fees attributable to the development of the Property or the design or construction of the Rose Lane Roadway Improvements for which the City is paying the costs

associated therewith, and that no City funds have been or will be expended in providing roadway improvements to the Property. Consequently, there are no roadway impact fees (or any other similar capital recovery fees, charges or assessments of any kind) due and payable by the Owner, the District and the Owner's and/or District's successors and/or assigns in connection with the development of the Property or the design or construction of the Rose Lane Roadway Improvements.

ARTICLE VII
PUBLIC IMPROVEMENT DISTRICT

Section 7.1 PID Consent. If the Owner and/or District requests the creation of Hackberry Public Improvement District No. 1 (the "PID") pursuant to Chapter 372 of the Texas Local Government Code and covering the Property, such request will be submitted to the City for its good faith consideration and possible approval. If approved by the City Council of the City, the City Council will adopt an acceptable "Resolution Consenting to the Creation of Hackberry Public Improvement District No. 1" (the "PID Consent"), which PID Consent shall be attached hereto as Exhibit H when it is adopted by the City. The PID Consent may not be withdrawn or modified after it has been adopted by the City, and no further action shall be required by the City to evidence the PID Consent. If the City adopts the PID Consent, then the City shall cooperate with Owner and the District in good faith in the creation of the PID including, but not limited to, the execution by the City of such further ordinances, resolutions, documents, or instruments as may be requested from time to time by Owner, the Texas Attorney General, the District or any political subdivision or governmental agency having jurisdiction over the PID or any PID Bonds issued by the PID. Notwithstanding the foregoing, nothing contained in this Article VII shall obligate the City to consent to the creation of the PID without the due consideration of the City Council.

Section 7.2 PID Powers and Authority. The PID shall be authorized to exercise all rights, powers, and authority granted to a public improvement district under the Constitution and laws of the State of Texas, as amended, including, but not limited to, the rights, powers, and authority of the PID to design, construct and/or acquire roadways and other improvements to serve development within the PID (all improvements so authorized by the Constitution and laws are referred to as the "PID Improvements") and to provide special supplemental services to benefit the development of real property within the PID (the "PID Services"). The PID Improvements and PID Services shall be designed, constructed and/or acquired using funds advanced by Owner ("Owner Advances"). The PID shall be authorized to repay Owner Advances, together with interest, (i) from a special assessment approved by the City, District and Owner and levied by the City Council after the creation of the PID against each final platted lot within the PID, which special assessment shall be a fixed amount and shall be collected annually by the City for a period not to exceed 25 years after such assessments are levied, (ii) from special assessments approved by the City, District and Owner and levied annually by the City Council upon each final platted lot within the PID, and (iii) from the proceeds of PID Bonds approved by the City Council that are secured by ad valorem "contract taxes" levied and collected by the District and that are otherwise issued in compliance with this Agreement and/or applicable law. PID Improvements may also be designed and constructed using proceeds from PID Bonds (approved by the City Council and secured by ad valorem "contract taxes" levied and collected by the District) that are issued without any Owner Advances having been made.

Section 7.3 **Addition of Land to the PID**. Owner agrees that it will not, without the prior written consent of the City, petition the City for the inclusion within the PID of any land outside the Property and within the corporate limits or ETJ of the City. Moreover, the Parties acknowledge and agree that the City Council has the right to refuse to approve the inclusion of any additional land within the PID if such inclusion would be detrimental to the PID or the PID's ability to fulfill its obligations herein.

Section 7.4 **PID Administrative Costs**. The Parties intend that all costs and expenses paid or incurred by the City in connection with the creation, existence, and operation of the PID will be paid (i) by Owner if not paid from, and subject to Owner's right to reimbursement from, the sources described in subparagraphs (ii) and (iii) hereafter, (ii) from the proceeds of PID Bonds, and/or (iii) from assessments levied and collected by the City against property within the PID. If the City levies an assessment against property within the PID to pay for the PID Improvements and PID Services and thereafter, on an annual basis, collects the assessments and forwards the same to Owner, the City shall be entitled to retain from such collections an amount equal to one and one-half percent (1.5%) of the amount assessed and collected each year by the City. If the City issues PID Bonds to pay for the PID Improvements and PID Services, the City shall be entitled to retain from the proceeds of the sale of the PID Bonds an amount equal to all the third-party expenses paid or incurred by the City as ordinary and customary costs of issuance of such PID Bonds.

Section 7.5 **Use of PID Assessments and PID Bond Proceeds**. The City shall deposit all PID assessments collected by the City (net of the amount retained by the City pursuant to Section 7.4 of this Agreement) and the proceeds of all PID Bonds issued (net of all Bond issuance costs and the amounts retained by the City pursuant to Section 7.4 of this Agreement) into a separate account (the "PID Account") selected by the bond underwriters for the investors who own the PID Bonds for the sole purpose of constructing and/or acquiring the PID Improvements and performance of the PID Services and/or reimbursing Owner for Owner Advances for the design, construction and/or acquisition of the PID Improvements and performance of the PID Services. The PID Account shall be created pursuant to a written escrow agreement among the City, Owner, and such financial institution (which escrow agreement shall include, but not be limited to, the procedures by which the City will approve or pre-approve the Owner Advances. Owner shall act as the construction manager for the construction or acquisition of the PID Improvements and performance of the PID Services; provided, however, Owner shall be required to comply with all applicable competitive bid requirements. Owner and the City shall enter into a reimbursement agreement and a construction management agreement which shall set forth in greater detail the duties and obligations of the City and Owner described herein.

Section 7.6 **PID Bonds**. (a) General Provisions. All PID Bonds shall be issued in accordance with the requirements of applicable state law and shall be approved by the City Council and by the Texas Attorney General. The terms and conditions of all PID Bonds shall be approved by the governing body of the City before they are issued. If the City approves the issuance of PID Bonds, such PID Bonds shall be repaid by an ad valorem tax levied and collected by the District on real property within the District, and the City shall have no liability whatsoever for the payment of such PID Bonds. If the District fails to approve the imposition of a contract tax to secure payment of the PID Bonds (including the approval of such tax at an election held within the boundaries of the District), then the City shall have no obligation to issue PID Bonds until such election has been successfully conducted. The City may, however, upon

approval by Owner and the District, approve the issuance of PID Bonds secured by special assessments to be levied and collected by the City against real property within the PID and by any other form of legally available security for the PID Bonds. The City agrees that it will proceed, when requested to do so by Owner, with the issuance of PID Bonds to finance the construction or acquisition of the PID Improvements and PID Services and with the issuance, from time to time when requested by Owner, of additional PID Bonds to refund previously issued PID Bonds ("PID Refunding Bonds"). Owner reserves the right to purchase all or any portion of any PID Bonds or PID Refunding Bonds pursuant to a negotiated bond purchase agreement to be executed between the City and Owner. In the event Owner purchases any of the PID Bonds or Refunding PID Bonds, the net proceeds from the sale will be placed in the PID Account. The City reserves the right to select its own bond counsel, financial advisor and underwriter of the PID Bonds whose fees and expenses will be paid from the proceeds of the sale of the PID Bonds.

(b) Provision of Funds to Pay PID Bonds and PID Refunding Bonds. In order to repay the PID Bonds and PID Refunding Bonds, the District shall be obligated to pay the City, each year, the amount necessary to (i) pay the debt service requirements of the PID Bonds and PID Refunding Bonds as they come due, together with such amounts as may be necessary to pay the costs and expenses incident thereto, (ii) pay the costs and expenses of acquiring, designing, constructing, and financing the PID Improvements and performing the PID Services, including, without limitation, the cost of acquiring all rights-of-way, easements, and land therefore, (iii) fund any special fund created for the payment and security of the PID Bonds and the PID Refunding Bonds, (iv) pay financial advisor's fees, credit enhancement fees, letter of credit fees, bond insurance premiums, liquidity facility fees, underwriter's discounts, reoffering fees, trustee's fees, registrar and paying agent's fees, bond counsel fees, fees of other legal counsel, rating agency fees, and printing and other expenses incurred in connection with the sale and delivery of the PID Bonds and PID Refunding Bonds, and (v) pay an amount sufficient to provide for the payment of capitalized interest on the PID Bonds and PID Refunding Bonds for a period not to exceed one year.

(c) Bond Ordinance. The City shall deliver to Owner, the District and the PID a substantially complete draft of each ordinance approving the issuance of PID Bonds or PID Refunding Bonds (a "Bond Ordinance"), including but not limited to any trust indenture authorized therein, setting forth (i) the principal amount and the maturity of the PID Bonds and PID Refunding Bonds to be issued, (ii) the special funds (including any sinking or reserve fund for future bond payments) created for the payment and security of the PID Bonds and PID Refunding Bonds, (iii) the provisions related to refunding, early retirement or defeasance of the PID Bonds and PID Refunding Bonds, (iv) the provisions relating to the creation and establishment of special accounts for the deposit of the proceeds of the PID Bonds and PID Refunding Bonds, and (v) the procedures to be followed for disbursement or withdrawal of funds deposited in such accounts. District comments to the Bond Ordinance shall be provided to the City within thirty (30) calendar days from the date the Bond Ordinance is delivered to the District or the Bond Ordinance shall be deemed to be approved by the District. The City shall designate the bond counsel for the Bond Ordinance, subject to the District's and PID's reasonable approval.

(d) Payments by the District. Following approval of a Bond Ordinance in accordance with Section 7.6(c) above, the District shall be obligated each year to levy, assess, and collect a tax on all taxable property within the District, unlimited by rate or amount, sufficient to pay the debt service requirements on the PID Bonds or PID Refunding Bonds, as applicable. The District shall be obligated to pay to the City an amount equal to the total of the principal, premium (if any), interest, paying agents' fees, credit enhancement or liquidity facility fees, and other reasonable charges and expenses that may accrue each year in connection with the PID Bonds and/or PID Refunding Bonds, as applicable.

(e) Calculation and Annual Payment. The District shall pay to the City an annual amount equal to the principal, premium (if any), interest, paying agents' fees, credit enhancement or liquidity facility fees and other reasonable charges and expenses which may accrue each year in connection with the payment of the PID Bonds and PID Refunding Bonds calculated as follows:

(i) Each year the City shall calculate the total amount of the payments to be made by the City pursuant to the PID Bonds and the PID Refunding Bonds in the twelve (12) months beginning on the following March 1 (the "Annual Calculation"). The City shall provide written notice to the District of the Annual Calculation by September 1 of each year.

(ii) The District shall levy, assess, and collect on all taxable property within its boundaries the taxes, both current and past due that will be sufficient to pay the Annual Calculation.

(iii) On each February 1 following written notification of the Annual Calculation, the District shall be obligated to certify to the City the amount of all taxes, current and delinquent, collected by the District and included in the Annual Calculation.

(iv) The obligations of the City to issue PID Bonds and PID Refunding Bonds and the obligation of the District to make the payments required herein are subject to the one-time approval by the voters within the District of a tax, unlimited in rate or amount, to make the payments described in this Agreement. The Parties agree to make such modifications to this Agreement as may be suggested by the City's bond counsel, the underwriters of the PID Bonds and PID Refunding Bonds, the rating agencies, the Attorney General of the State of Texas, or the issuers of any credit enhancement for the PID Bonds and PID Refunding Bonds so long as the modifications do not materially increase the obligations of the City or Owner under this Agreement.

(v) For each year during which the PID Bonds and PID Refunding Bonds, or any part of the principal, premium (if any), or interest thereof, remain outstanding and unpaid, there shall be levied, assessed, and collected by the District in due time, form, and manner a continuing direct annual ad valorem tax, without limit as to rate or amount, on all taxable property within the District, at a rate from year to year sufficient (A) to pay the principal of, premium (if any), and interest on the PID Bonds and the PID Refunding Bonds, (B) to create a sinking fund for the payment of principal thereon, when due, (C) to pay the expenses of assessing and collecting such taxes, and (D) to pay paying agents'

fees, credit enhancement or liquidity fees or obligations or other charges and expenses relating to the PID Bonds and PID Refunding Bonds. All proceeds from the collection of taxes levied as herein provided, except expenses incurred in assessment and collection, shall be paid into the debt service fund or such other funds as may be created by or pursuant to the Bond Ordinance.

(f) Bond Payments. The District shall have the obligation to make the following payments to the City in the manner required by this Section 7.6(f) for so long as any PID Bonds and PID Refunding Bonds (or other obligations and fees relating to such PID Bonds and PID Refunding Bonds) are outstanding:

(i) Such amounts, payable semi-annually on or before thirty (30) days prior to the last business day prior to the due date of each interest payment on the PID Bonds and PID Refunding Bonds, as may be necessary to pay the principal and/or interest coming due on the PID Bonds and PID Refunding Bonds;

(ii) Such amounts, payable upon receipt of a statement therefore, as may be necessary to pay the fees, other costs and charges of the paying agent, registrar or trustee for paying or redeeming the PID Bonds and PID Refunding Bonds coming due on such date;

(iii) Such amounts, payable upon receipt of a statement therefore, as may be necessary to pay (A) the fees incident to credit enhancements of the PID Bonds or PID Refunding Bonds, (B) the actual cost of any special accounting audits required by or for the PID Bonds and PID Refunding Bonds, (C) any extraordinary or unexpected expenses or costs reasonably and necessarily incurred in connection with the PID Bonds and PID Refunding Bonds, including any expenses of litigation, and (D) any costs of special studies and special professional services if required by any governmental directive or regulation or otherwise deemed appropriate by the District;

(iv) Such amounts as may be necessary to make all payments into any special fund or reserve fund required to be established and/or maintained by the provisions of any Bond Ordinance; and

(v) Such amounts as may be necessary to pay any deficiency in any fund or account required to be accumulated and/or maintained by the provisions of any Bond Ordinance.

The City shall have the right, but not the obligation, to make any payment related to the PID Bonds, PID Refunding Bonds, PID Improvements or PID Services from any source including the payments by the District under this Agreement.

(g) Termination of Payment Obligations of the District. The obligation of the District to make the payments described in this Agreement shall terminate on the earlier to occur of the date when (i) all PID Bonds and PID Refunding Bonds, and all obligations relating thereto, have been paid in full and are no longer outstanding, or (ii) there is irrevocably deposited with the paying agent or trustee, as the case may be, in trust, Governmental Obligations (as defined below), certified by an independent public accounting firm of national reputation and approved

by the City, which shall mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient funds to pay the principal of, redemption premium (if any) on, and interest on all outstanding PID Bonds and PID Refunding Bonds to their respective due date or dates by reason of maturity, redemption, or otherwise, and all other obligations and fees relating to the PID Bonds and PID Refunding Bonds. "Governmental Obligations" shall mean direct obligations of the United States of America, including obligations, the principal of and interest on which are unconditionally guaranteed by the United States of America, and United States Treasury obligations.

ARTICLE VIII
EVENTS OF DEFAULT, REMEDIES, AND INDEMNITIES

Section 8.1 **Events of Default**. No Party shall be in default under this Agreement until (a) written notice of the alleged failure of such Party to perform under this Agreement has been given to such Party, which written notice shall specify in reasonable detail the nature of the alleged failure, and (b) such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature and extent of the alleged failure, but in no event less than ten (10) calendar days for a monetary default or thirty (30) calendar days for a non-monetary default after written notice of the alleged failure has been given). In addition, for non-monetary defaults, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom notice is given begins to cure the alleged failure within the thirty (30) day cure period and thereafter diligently pursues a cure of the alleged failure.

Section 8.2 **Remedies**. (a) If a Party is in default under this Agreement (as set forth in Section 8.1 of this Agreement), then any non-defaulting Party shall be entitled to seek (i) immediate injunctive relief and mandamus, (ii) specific performance, and (iii) to the maximum extent permitted by law, actual damages (but excluding special or consequential damages). Except as provided in this Agreement, no Party, however, shall be entitled to terminate this Agreement as a result of such breach or default.

(b) No default under this Agreement by any Party shall affect, in any way, (i) the obligation of the City to process preliminary and final plats and plans and specifications with respect to portions of the Property that are not directly impacted by the default and which are owned by a party other than the defaulting Party, (ii) the obligation of the City to provide services to a fully developed phase within the Property (including water and wastewater service), (iii) the obligations of the City under any separate agreement with the District and/or the PID, (iv) the validity or effectiveness of any consent given by the City (whether in this Agreement, a Consent Ordinance, or otherwise) to the creation of the District or the PID, (v) the continuation of the ETJ status of the Property and its immunity from annexation as provided by this Agreement (except the re-annexation of Tract 8 as provided in this Agreement) or any Consent Ordinance, (vi) the continued existence of the District and the PID within the City's ETJ as provided by this Agreement or any Consent Ordinance, and (vii) the rights and powers of the District and the PID pursuant to the Constitution of the State of Texas, the general laws of the State, special legislation of the State, this Agreement, or any Consent Ordinance including, but not limited to, the issuance of bonds by the District or the PID, the levy and collection by the District of ad valorem taxes, and the levy and collection by the PID of special assessments.

(c) The remedies set forth in this Section 8.2 are the sole and exclusive remedies of the Parties for a default under this Agreement.

Section 8.3 Dispute Resolution. (a) Except as provided in Section 8.2 above and Section 8.3(b) below, any and all disputes arising between the Parties with respect to this Agreement or any matters covered hereby shall be resolved by the Parties in the manner set forth in Exhibit J attached hereto and incorporated herein by reference; provided, however, any party shall have the right to obtain injunctive relief from any court of competent jurisdiction prior to pursuing the Dispute Resolution Procedures set forth on Exhibit J with respect to any dispute which can not be resolved through the Dispute Resolution Procedures set forth on Exhibit J within a time frame that will avoid irreparable harm to the Party seeking injunctive relief (and, in such circumstances, the Dispute Resolution Procedures set forth in Exhibit J shall be complied with after the injunctive relief is sought and either obtained or delivered).

(b) Notwithstanding the foregoing, a breach or default by any Party in the payment of any amounts due hereunder shall not be subject to the provisions of Section 8.3(a) above and may be remedied by the pursuit of any actions and/or remedies available at law or in equity.

Section 8.4 Limited Waiver of Immunity. The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the District and the City unconditionally and irrevocable waive all claims of sovereign and governmental immunity they may have (including, but not limited to, immunity from suit) to the extent, but only to the extent, that a waiver is necessary to enforce this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained in this Section 8.4 shall not waive any immunities that the District or the City may have with respect to claims of injury to persons, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity in this Section 8.4 is not enforceable by any party not a party to this Agreement or any party that may be construed to be a third party beneficiary to this Agreement.

Section 8.5 Force Majeure: If a party hereto is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation related to performance of a monetary obligation, then the obligations of such party, to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall include, without limitation of the generality thereof, (i) acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, and (ii) breakage or accidents to machinery, pipelines or canals, and (iii) any other inabilities of either party, whether similar to those enumerated or otherwise, any of which events in subclauses (i) (ii) or (iii) which are not within the control of the party claiming such inability and which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall

be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

ARTICLE IX
BINDING AGREEMENT, TERM, AND ASSIGNMENT

Section 9.1 **Beneficiaries**. Except as provided in Section 1.5 hereof, this Agreement shall bind and inure to the benefit of the City and Owner and their successors and assigns.

Section 9.2 **Term**. (a) The term of this Agreement shall commence on the Effective Date and shall continue during the Governing Regulations Period unless terminated on an earlier date by express written agreement executed by the City, the District and Owner and all of their respective successors and assigns. Upon the expiration of the term of this Agreement, this Agreement may be extended, at Owner's, the District's or the City's request and with City Council approval, for two (2) successive periods not to exceed fifteen (15) years each.

(b) In the event this Agreement is terminated by agreement as provided in Section 9.2(a) of this Agreement, the City shall, upon request, promptly execute and file of record, in the Deed Records of the County, a document confirming the termination of this Agreement.

(c) This Agreement may be terminated by the mutual agreement of the parties.

Section 9.3 **Assignment**. (a) Owner shall have the right to assign this Agreement, in whole or in part, or to assign any of the rights, title, and interests of Owner under this Agreement, in whole or in part, to any Person without the prior written consent of the City or the District, provided Owner gives written notice to the City and the District of such assignment and provided the assignee agrees, in writing, to assume the obligations of Owner under this Agreement. No assignment of this Agreement or any of the rights, title, and interests of Owner under this Agreement shall relieve Owner of any obligations to the City and the District that accrued prior to the effective date of such assignment. Owner shall, however, be released from all liability under this Agreement that may arise from and after the effective date of any assignment.

(b) If Owner proposes to sell any or all of the Property, Owner shall have the option to (i) terminate this Agreement prior to or in connection with the sale of such portions of the Property subject to the provisions of Section 9.3(c) below, or (ii) sell such portions of the Property subject to the terms of this Agreement, provided, that in such event, Owner's assignee shall not acquire the rights of Owner hereunder unless Owner expressly states in the conveyance deed or by separate instrument placed of record that said assignee is assigned and is receiving Owner's rights and obligations for purposes of this Agreement and notice is sent by Owner to the City and/or the District.

(c) If Owner elects to terminate this Agreement pursuant to Section 9.3(b) above, then all obligations of the Parties hereto shall terminate except for the Owner's and/or the

District's obligation to (i) develop Owner's Phase I, (ii) complete the Rose Lane Water Line as provided herein, (iii) complete the portion of the Rose Lane Water Facilities sufficient to serve Phase I of the Property and the City's existing water customers as of the Effective Date hereof, and (iv) complete a 2" asphalt overlay over the existing paving of the Section D portion of Rose Lane if Section D has not already been completed as provided in Section 6.1(a)(iv) hereof.

9.4 **Recordation, Releases, and Estoppel Certificates.** (a) Binding Obligations. Pursuant to the requirements of Section 212.172(f) of the Texas Local Government Code, 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; provided, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations that apply to specific lots. For purposes of this Agreement, the Parties agree (i) that the term "End-Buyer" means any owner, developer, tenant, user, or occupant, (ii) 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 governmental authority having jurisdiction and for which all planned and approved improvements have been constructed and accepted to the extent that a building permit may be obtained for such lot, and (iii) that the term "land use and development regulations that apply to specific lots" means the Governing Regulations, Building Codes and Special Regulations.

(b) Releases. From time to time upon written request of Owner or the District (or any other owner, developer, tenant, user, or occupant of land within the Property), the City shall execute, in recordable form, a partial release from this Agreement of a fully developed and improved lot owned by an End-Buyer within a fully developed and improved phase (subject only to the continued applicability of the Governing Regulations, Building Codes, and the Special Regulations).

(c) Estoppel Certificates. From time to time upon written request of Owner or the District (or any other owner, developer, tenant, user, or occupant of land within the Property which land is not a fully developed and improved lot owned by an End-Buyer within a fully developed and improved phase), the City will execute a written estoppel certificate to such person or entity (i) identifying the obligations of Owner or the District under this Agreement that have been fully performed, (ii) identifying the obligations of Owner or the District under this Agreement that remain to be performed, including the interim status of any obligations for which performance has begun, (iii) identifying any obligations of Owner or the District under this Agreement that are in default or, with the giving of notice or passage of time, would be in default, and (iv) stating, to the extent true, that to the best knowledge and belief of the City, that Owner and the District are in compliance with their respective duties and obligations under this Agreement.

ARTICLE X
MISCELLANEOUS PROVISIONS

Section 10.1 Notice. The parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by this Agreement shall be

given in writing addressed to the party to be notified at the address set forth below for such party, (a) by delivering the same in person, (b) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, (c) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

City: City of Hackberry
119 B-7 Maxwell Road
Frisco, Texas 75034
Attn: Mayor
Phone: (972) 292-3223
Fax: (972) 292-2790
Email: hackberry@prodigy.net

With a copy to: Rapier, Wilson & Wendland, P.C.
103 W. McDermott
Allen, Texas 75013-2751
Attn: John Rapier
Phone: (972) 727-9904
Fax: (972) 727-4273
Email: rapier@rapierwilson.com

District: Denton County Fresh Water Supply District No. 4-A
c/o Leonard Frost Levin Van Court & Marsh
816 Congress Avenue, Suite 1280
Austin, Texas 78701
Attn: Tom Leonard
Phone: (512) 477-7161
Fax: (512) 476-1676
Email: tleonard@leonardfrost.com

With a copy to: Leonard Frost Levin Van Court & Marsh
816 Congress Avenue, Suite 1280
Austin, Texas 78701
Attn: Tom Leonard
Phone: (512) 477-7161
Fax: (512) 476-1676
Email: tleonard@leonardfrost.com

Owner: One Hackberry, Ltd.
5225 Village Creek Drive, Suite 300
Plano, Texas 75093

Attn: Barry Milton
Phone: (972) 931-9537
Fax: (972) 931-2660
Email: bmilton@daa-civil.com

With a copy to: Lennar Homes of Texas Land and Construction, Ltd.
1707 Marketplace Blvd., Suite 250
Irving, Texas 75063
Attn: Steve Lenart
Phone: (469) 587-5210
Fax: (469) 587-5221
Email: steve.lenart@lennar.com

With a copy to: Bellinger & DeWolf, L.L.P.
10,000 North Central Expressway, Suite 900
Dallas, Texas 75231
Attn: Glen A. Bellinger
Phone: (214) 954-9540
Fax: (214) 954-9541
Email: gbellinger@bd-law.com

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least ten (10) days written notice to the other parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

Section 10.2 Audit Rights. (a) The District shall permit the City to make reasonable inspections of the books and records of the District and shall deliver to the City, by January 31 of each year, at least one copy of any financial report or reports submitted to the State of Texas or any department or agency thereof. The District shall file a copy of its annual audit and a copy of its proposed budget for the following year with the City's Mayor no later than January 31 and July 1, respectively.

(b) The City shall permit the Owner and the District to make reasonable inspections, audits and copies of the books and records of the City relating to the City Resale Water Rate and the City Resale Wastewater Rate. If there is a disagreement about the City Resale Water Rate or the City Resale Wastewater Rate, such disagreement shall be resolved in the manner set forth in Section 8.3 hereof.

Section 10.3 Amendments. The Agreement may only be amended by resolution or ordinance of the City Council and the District, together with written approval from all of the other Parties to this Agreement. No City or District official has the authority to waive or modify the terms of the Agreement.

Section 10.4 Time. Time is of the essence in all things pertaining to the performance of this Agreement.

Section 10.5 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, such unenforceable provision shall be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect and shall be interpreted to given effect to the intent of the Parties. Without limiting the generality of the foregoing, (a) 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 (b) 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.

Section 10.6 Waiver. Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 10.7 Applicable Law and Venue. The construction and validity of this Agreement shall be governed by the laws of the State of Texas without regard to conflicts of law principles. Venue shall be in Denton County, Texas.

Section 10.8 Reservation of Rights. To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws. This Agreement shall be enforceable under state and federal law.

Section 10.9 Further Documents. The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement.

Section10.10 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, and (c) 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 recitals, would not have entered into this Agreement.

Section 10.11 Exhibits. The exhibits on the List of Exhibits are attached to this Agreement and are incorporated as part of this Agreement. Any proposed change to an exhibit shall be considered a proposed amendment to this Agreement.

Section 10.12 Effect of State and Federal Laws. Notwithstanding any other provision of this Agreement, the Parties and their successors or assigns shall comply with all applicable statutes or regulations of the United States and the State of Texas, and any rules implementing such statutes or regulations.

Section 10.13 Authority; Binding Obligation. (a) The City represents and warrants that this Agreement has been approved by ordinance duly adopted by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. The City acknowledges and agrees (i) that this Agreement shall be binding upon the City and enforceable against the City in accordance with its terms and conditions, and (ii) that the performance by the City under this Agreement is authorized by Section 212.171 of the Texas Local Government Code and by Chapter 791 of the Texas Government Code. The City waives any claim or defense that this Agreement is unenforceable on the grounds that any obligations of the City bind, impair, or otherwise adversely affect the exercise by the City of any governmental discretion, governmental authority, or governmental functions.

(b) The District represents and warrants that this Agreement has been approved and duly adopted by the Board of Directors of the District 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 District has been duly authorized to do so. The District acknowledges and agrees (1) that this Agreement shall be binding upon the District and enforceable against the District in accordance with its terms and conditions, and (2) that performance by the District under this Agreement is authorized by Chapter 791 of the Texas Government Code. The District waives any claim or defense that this Agreement is unenforceable on the grounds that any obligations of the District bind, impair, or otherwise adversely affect the exercise by the District of any governmental discretion, governmental authority, or governmental functions.

(c) Owner represents and warrants that this Agreement has been approved by appropriate action of Owner, that the individual executing this Agreement on behalf of Owner has been duly authorized to do so, and that, when executed by such individual, this Agreement shall be binding upon and enforceable against Owner.

Section 10.14 Cooperate Fully. As used in this Agreement, the term "cooperate fully" means that the City will take, to the extent necessary, reasonable action(s) in a timely manner consistent with (a) all applicable rules and regulations to accomplish the objectives and intent of this Agreement, (b) accepted sound engineering practices in the area of public works, and (c) good government practices as demonstrated by responsible municipalities in north central Texas.

Section 10.15 Owner's Development Schedule. Prior to the approval of any final plat for any phase of the development of the Property, the Owner shall deliver to the City a copy of

the Owner's Development Schedule for each phase of the Property including a copy of any amended or revised development schedules as such development schedules are amended or revised.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the Effective Date set forth herein.

CITY OF HACKBERRY, TEXAS

By: _____
Brenda Lewallen, Mayor
Date: 8-23-05

ATTEST:

By: Sharon Harper
Sharon Harper, City Secretary
Date: 8-23-05

DENTON COUNTY FRESH WATER SUPPLY DISTRICT NO. 4-A

By: _____
Name: Alan Michlin
Title: President
Date: 8/18/05

ONE HACKBERRY, LTD.,
a Texas limited partnership

By: PDC PROPERTIES, INC.,
a Texas corporation,
General Partner

By: _____
Barry T. Milton, Vice President
Date: 8-18-05

By: LENNAR TEXAS HOLDING COMPANY,
a Texas corporation,
General Partner

By: _____
Steven H. Lenart, Vice President
Date: 8/18/05

EXHIBIT LIST

Exhibit A-1	Tract 1 Property Description – Approximately 43.37 Acres (Net of the Tract 1 Director Lots)
Exhibit A-2	Tract 2 Property Description – Approximately 29.04 Acres
Exhibit A-3	Tract 3 Property Description – Approximately 36.16 Acres
Exhibit A-4	Tract 4 Property Description – Approximately 7.92 Acres
Exhibit A-5	Owner's Portion of the 20-Acre Property Description – Approximately 15 Acres (Net of the 20-Acre Tract Director Lots)
Exhibit A-6	Tract 5 Property Description – Approximately 7.97 Acres
Exhibit A-7	Tract 6 Property Description – Approximately 16.32 Acres
Exhibit A-8	Tract 7 Property Description – Approximately 21.51 Acres
Exhibit A-9	Tract 8 Property Description – Approximately 18.00 Acres
Exhibit A-10	Tract 9 Property Description and/or Depiction – Approximately 3.11 Acres
Exhibit A-11	Tract 10 Property Description and/or Depiction – Approximately 98.2 Acres
Exhibit A-12	Depiction of the Property – Approximately 306.6252 Acres
Exhibit A-13	Depiction of City, County, ETJ and CCN Boundaries
Exhibit B	Description and/or Depiction of the Annexation Strip
Exhibit C	Subdivision Ordinance
Exhibit D	Consent Resolution
Exhibit E	Special Conditions
Exhibit F	Depiction of the Location of the Rose Lane Water Line
Exhibit G	Depiction of the Location of the Wastewater Transmission Line
Exhibit H	Resolution Consenting to the Creation of Hackberry Public Improvement District No. 1
Exhibit I	Schedule of Engineering Fees and Expenses
Exhibit J	Dispute Resolution Procedure
Exhibit K	Rose Lane Roadway Improvements
Exhibit L	City Resale Water Rate
Exhibit M	District Retail Wastewater Rate
Exhibit N	Water and Wastewater Deficit Connection Fee
Exhibit O	Calculation of District's Prorata Water Reimbursement
Exhibit P	Calculation of District's Prorata Wastewater Reimbursement

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this "Agreement") is executed by and among the CITY OF HACKBERRY, TEXAS (the "City") and PAPAGOLOS & ASSOCIATES, INC. ("Owner") (individually referred to as a "Party" and collectively as the "Parties"), to be effective on the latest date (the "Effective Date") executed by the Parties.

RECITALS

WHEREAS, the City is a Type A general law municipality and political subdivision of the State of Texas organized and existing under the laws of the State of Texas; and

WHEREAS, Owner is a Texas corporation duly organized and validly existing under the laws of the State of Texas; and

WHEREAS, Owner owns or will own a 92.354 acre tract described in Exhibit "A" (the "Property"), attached to this Agreement and incorporated herein by reference; and

WHEREAS, the Property is located wholly within the extraterritorial jurisdiction ("ETJ") of the City; and

WHEREAS, all of the Property is located and included within an area for which the City has (i) a certificate of convenience and necessity ("CCN") to be the retail provider of water service, and (ii) the right and ability to be the retail provider of wastewater service; and

WHEREAS, Owner intends to develop a residential subdivision on the Property containing approximately 450 single family homes on individual lots; and

WHEREAS, water, wastewater, drainage, roadway and other public improvement projects necessary to serve the Full Development (as defined in Article IV hereof) of the Property will be designed, constructed, operated, and maintained (and retail water and wastewater service provided) through the cooperative efforts of the Parties as set forth in this Agreement, including, but not limited to, upon request of Owner and approval of the City pursuant to Section 7.1 herein, (i) the creation and approval by the City within the Property of one or more public improvement districts pursuant to the authority of Chapter 372, Texas Local Government Code (individually, a "PID" and, collectively, the "PIDs") and (ii) the sale and issuance by the City of PID bonds ("PID Bonds") secured by assessments levied by the City upon the property within the PIDs (with the City having no liability for the payment of such PID bonds from any source other than assessments on the Property or other revenues generated by the PID); and

WHEREAS, water, wastewater, drainage, roadway and other infrastructure improvements necessary to serve the Full Development of the Property will be designed, constructed, operated, and maintained (and retail water and wastewater service provided) through the cooperative efforts of the Parties as set forth in this Agreement, including, but not limited to, the sale and issuance by the City of PID Bonds to be repaid primarily from special

assessments levied by the City upon the Property (with the City having no liability for the payment of such PID Bonds); and

WHEREAS, it is expressly understood that the Property may become a part of the City and, therefore, the City has the obligation to insure that all improvements, including streets, water, and wastewater systems, conform to the Subdivision Ordinances and Special Conditions set forth in this Agreement, whereas all such infrastructure improvements, easements and right-of-way will be conveyed to the City, subject to the provisions of Section 1.2 hereof; and

WHEREAS, the Parties desire that the Property be developed solely in accordance with standards, regulations, fees, and charges set forth or incorporated in this Agreement, which standards, regulations, fees, and charges shall remain fixed until expiration of the Governing Regulations Period (as defined in Section 2.1 hereof), subject to any required revisions pursuant to state or federal law or regulations; and

WHEREAS, pursuant to Section 212.172 of the Texas Local Government Code, the City has the authority to enter into a written development agreement with the owner of land within the City's ETJ for the purposes set forth in Section 212.172; and

WHEREAS, the Parties intend that, with respect to the obligations between the City and Owner contained in this Agreement, this Agreement shall be considered as and enforced as a development agreement authorized by Section 212.172 of the Texas Local Government Code; and

WHEREAS, the City has entered into an Interlocal Agreement with Denton County pursuant to Section 242, Texas Local Government Code, ceding exclusive jurisdiction to the City over the subdivision of land within the City's ETJ, including the exclusive right to determine the regulations that shall apply to such subdivision; and

WHEREAS, the Parties further intend that all of their respective obligations contained in this Agreement be enforced to the maximum extent allowed by law including, but not limited to, enforcement based on the authority of the above-referenced provisions of the Texas Constitution, Texas Government Code, and Texas Local Government Code, and including waivers of governmental immunity to the extent necessary to enforce this Agreement and give full effect to the intent of the Parties.

NOW, THEREFORE, in consideration of the obligations of the Parties contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are acknowledged, the Parties agree as follows:

ARTICLE I
JURISDICTIONAL AGREEMENTS

Section 1.1 Annexation Limitation. (a) Pursuant to the authority of Section 212.171 et. Seq. of the Texas Local Government Code, the City agrees that it will not annex or attempt to annex, in whole or in part, the real property (including, without limitation, any portions of the Property) located within the boundaries of the PID until the earlier of (i) 15 years from the Effective Date, or (ii) repayment of all PID Bonds or other reimbursement obligations to Owner

under this Agreement. If the City annexes any portions of the Property located within the boundaries of the PID prior to Full Development of the Property and/or prior to full reimbursement to Owner of all eligible expenses and costs and repayment of all PID Bonds, the City shall automatically assume (1) complete liability for such reimbursement to Owner of all such remaining eligible expenses and costs (A) in accordance with the written agreement(s) or other arrangements between Owner and the PID, and (B) as otherwise required by law, and (2) responsibility of and/or complete liability for repayment and/or discharge of the PID Bonds.

(b) If the City desires and/or attempts to annex any portions of the Property located within the boundaries of the PID after Full Development of the Property and after full reimbursement to Owner of all eligible expenses and costs, Owner shall support and not oppose the City's annexation attempts or efforts, provided that nothing contained in this Section 1.1(b) shall be binding on future homeowners in the Property.

Section 1.2 CCN Consent. (a) The City agrees to be and shall be, and the City and the Owner agree that the City shall be, the sole retail provider of water and wastewater services to the Property, and the City shall provide such retail water and wastewater services and capacity necessary to serve the Property and the residents of the Property.

ARTICLE II
DEVELOPMENT STANDARDS

Section 2.1 Governing Regulations. (a) Except for the "Building Codes" and "Special Regulations" described in Section 2.2 of this Agreement, development of the Property shall be governed solely by (i) the subdivision regulations attached hereto as and/or described on Exhibit B and incorporated herein by reference (the "Subdivision Ordinance"), (ii) the special conditions attached hereto as and/or described on Exhibit C and incorporated herein by reference (the "Special Conditions"), and (iii) the preliminary and final plats that are approved, from time to time, by the City, the County and/or any other applicable governmental authorities (as applicable, the "Approved Preliminary Plats" and "Approved Final Plats"). The Subdivision Ordinance, Special Conditions, Approved Preliminary Plats, and Approved Final Plats shall hereinafter be collectively referred to as the "Governing Regulations", and the Governing Regulations shall apply to the development of the Property during the period (the "Governing Regulations Period") commencing on the date hereof and continuing until the earlier of (A) the expiration of fifteen (15) years from the Effective Date hereof, or (B) full repayment and extinguishment of all PID Bonds issued for or in connection with the Property. Without limiting the foregoing, development of the Property shall include, but not be limited to, the filing of, review of, and approval of preliminary and final plats for the Property and the filing of, review of, and approval of construction plans and specifications for water, wastewater, drainage and roadway infrastructure for the Property, and the Governing Regulations shall govern, control and be applied to the development of the Property in lieu of any other City statutes, ordinances, rules or regulations.

(b) It is hereby expressly understood and agreed that development of the Property shall be in accordance with the Governing Regulations. All matters related to the Property which are typically governed by, controlled by and/or included in the City zoning ordinances and/or regulations will be as determined by Owner at Owner's sole discretion subject to the Governing

Regulations. No other City statutes, ordinances, rules or regulations shall govern, control or apply to the Property or the use or development of the Property.

Section 2.2 Other Regulations. Notwithstanding Section 2.1 of this Agreement, development of the Property shall also be subject to:

(a) the following uniform building codes (collectively, the "Building Codes"), as adopted by the City on August 23, 2005, the effective date of the Agreement by and between the City, Denton County Fresh Water Supply District No. 4-A and One Hackberry, Ltd, as approved by ordinance duly adopted by the City Council: (i) International Building Code; (ii) International Plumbing Code; (iii) International Mechanical Code; (iv) International Fuel Gas Code; (v) International Energy Conservation Code; (vi) International Residential Code; (vii) National Electrical Code; and (viii) International Fire Code; and

(b) the following regulations, as amended (collectively, the "Special Regulations"), provided they are approved by ordinance duly adopted by the City Council and provided they are uniformly applied and enforced throughout the corporate limits of the City: (i) regulations for sexually oriented businesses; (ii) regulations with respect to the sale of fireworks and discharge of firearms; (iii) regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy; (iv) regulations that the City is required to adopt under Federal or State law; or (v) the implementation of any drought contingency plan required by the TCEQ, the City of Frisco or other plan of the City in response to natural events, acts of God or equipment failure or malfunction.

Section 2.3 Conflicts. In the event of any conflict or inconsistency between the Special Conditions, on the one hand, and any of the Subdivision Ordinances, the Special Regulations or the Building Codes, on the other hand, the Special Conditions shall control unless prohibited by state or federal law. In the event of any conflict or inconsistency between this Agreement and the Governing Regulations, the Building Codes, or the Special Regulations, this Agreement shall control. Subject to the foregoing, development of the Property shall be governed (a) by this Agreement, the Governing Regulations, the Building Codes, and the Special Regulations, and no other City statutes, ordinances, rules or regulations of any kind without the prior written consent of Owner, and (b) applicable laws and regulations of the U.S. and the State of Texas.

Section 2.4 Building Permits. Each builder shall be responsible for assuring that all structures constructed by such builder within the Property are in substantial compliance with the applicable portions of the Subdivision Ordinance, Special Conditions and Building Codes. Inspections to determine compliance therewith shall be conducted by independent, certified and licensed inspectors hired and paid by the Owner or the builders from a list of inspectors approved by the City. Each builder shall maintain a record of such inspections, and all such records shall be available for review and copying by Owner and the City during normal business hours. No structure may be occupied until the inspector has certified in writing to the builder and the City that such structure complies with the applicable portions of the Subdivision Ordinance, Special

Conditions and Building Codes. All inspectors shall be subject to all applicable anti-corruption, anti-kickback and anti-racketeering statutes.

Section 2.5 Approved Permit. This Agreement constitutes a "permit" as defined in Chapter 245, Texas Local Government Code, as amended, that is deemed filed with the City on the Effective Date. Except as provided by this Section 2.5, Owner does not, by entering into this Agreement, waive (a) any rights arising under Chapter 245, as amended, or under Chapter 43 of the Texas Local Government Code, as amended, or under any other provision of law, or (b) any claims that City regulation of the Property constitutes an illegal exaction or an inverse condemnation. Owner does, however, waive such rights and claims to the extent that they are based on regulation of the Property by application of the Governing Regulations in accordance with this Agreement.

Section 2.6 Moratoriums. The City agrees that the rights of Owner pursuant to Chapter 245 of the Local Government Code, together with the rights of Owner under this Agreement to develop in accordance with the Governing Regulations, shall continue and be unaffected by any moratorium that is hereafter adopted by the City with respect to real property within its corporate or ETJ limits and that would adversely affect the development of the Property. Nothing contained herein shall imply that the City has, or that the City may impose, any right or authority over the Property including any right or authority to issue, impose or enforce any moratorium, delay or deferment of any kind over or against the Property. Notwithstanding the foregoing, this Section 2.6 does not apply to moratoriums imposed by or caused by other governmental authorities including but not limited to the United States, the State of Texas, North Texas Municipal Water District or the City of Frisco. In addition, this Section 2.6 will not be construed to effect or prevent the implementation of any drought contingency plan required by the TCEQ or other plan of the City in response to natural events or acts of God.

Section 2.7 Good Faith, Fair Dealing and Cooperation. It is expressly understood and agreed that each of the Parties hereto shall act in good faith and shall cooperate with each other in accomplishing the transactions and intent of the Parties as described herein. Without limiting the foregoing, the (i) City hereby agrees to timely (A) issue any and all permits, perform any and all inspections, give any and all approvals and accept any and all dedications required or contemplated herein, and (B) not to act arbitrarily or in a manner which unreasonably delays, hinders or prevents accomplishing the development of the Property or the transactions and intent of the Parties as described herein, and (ii) the Owner hereby agrees to timely give any and all approvals contemplated herein and not to act arbitrarily or in a manner which unreasonably delays, hinders or prevents accomplishing the intent of the Parties as described herein.

Section 2.8 City Fees, Charges and Expenses. (a) Except as otherwise expressly set forth in this Agreement including, without limitation, in Sections 4.4, 5.3 and 6.2 of this Agreement or in Section 2.8(b) and Section 2.8(c) below, the City hereby agrees not to charge or assess to or against, and not to seek or collect from Owner or the Owner's successors or assigns, any (i) permit fees, charges or assessments, (ii) inspection, approval, green tag or inspection or occupancy fees, charges or assessments, (iii) plan submittal, review or approval fees, except as provided in Section 2.8(c), (iv) dedication fees, charges or assessments, (v) maintenance, repair or replacement fees, charges, costs, expenses or assessments, reserves or advances; provided, however, the City may charge repair or replacement fees to replace water meters or other water

or wastewater facilities damaged by the Owner's contractors or any builder or owner of any lot within the Property (vi) park, road or other impact fees, charges or assessments, or (vii) other fees, charges, assessment, costs or expenses of any kind.

(b) The City shall charge and Owner shall pay a development inspection fee (the "City Inspection Fee"). The City Inspection Fee shall be two percent (2%) of the actual costs to construct and install water, wastewater, drainage and roadway improvements upon and within the Property and shall be payable by Owner to City prior to scheduling a pre-construction meeting for such improvements.

(c) The City shall charge and Owner shall pay a plan review fee (the "Plan Review Fee"). The Plan Review Fee shall be charged to Owner pursuant to the schedule attached hereto as Exhibit D and shall be payable by Owner to City prior to scheduling a pre-construction meeting for such improvements.

(d) Owner shall reimburse the City for the City's reasonable attorneys fees actually incurred by the City in connection with any agreements or other actions requested from the City by the Owner pursuant hereto. In this regard, the City shall deliver to the Owner a written statement itemizing the amounts requested to be reimbursed pursuant to this Section 2.8(d) together with invoices evidencing such amounts owed and/or paid by the City to the City's attorney(ies). Within thirty (30) days after the Owner's receipt of such written request for reimbursement by the City pursuant to this Section 2.8(d), the Owner shall deliver to the City payment in the amounts requested by the City in such written request for reimbursement, subject to the Owner's right to file a "Fee Reimbursement Dispute Notice" (herein so called) within ten (10) days following the receipt of the City's invoice in the event Owner disputes the reimbursement amounts requested by the City. If a Fee Reimbursement Dispute Notice is given and the Parties are unable to resolve such dispute within ten (10) days after delivery of the Fee Reimbursement Dispute Notice, such dispute shall be resolved pursuant to Section 8.3 hereof.

ARTICLE III
PRIOR AGREEMENTS

Section 3.1 Prior Agreements. This Agreement supersedes and replaces, in their entirety, any prior development agreements or other agreements which may be applicable to any portion of the Property, including any portion of the Property included in the Development Agreement by and between the City, Denton County Fresh Water Supply District No. 4-A and One Hackberry, Ltd, dated August 23, 2005. This Agreement does not supersede any prior agreements applicable to any property located outside the Property and such prior agreements remain in full force and effect. This Agreement constitutes the complete agreement and understanding of the Parties with regard to the subject matter of this Agreement and supersedes and replaces all prior agreements and understandings, whether oral or written, regarding the subject matter of this Agreement.

ARTICLE IV
WATER SERVICE INFRASTRUCTURE

Section 4.1 Commitment for Water. Subject to the terms and conditions of the Supply Contract (as defined in Section 4.2 below), the City shall provide water service to serve up to 450 single-family equivalent connections within the Property (hereinafter referred to as "Full Development") unless a larger number of connections is agreed to by the Parties hereto. Subject to obtaining sufficient water service pursuant to the Supply Contract described in Section 4.2 below, water service for Full Development of the Property shall be provided in phases as the Property is developed based on Owner's development schedule. Subject to obtaining sufficient water service pursuant to the Supply Contract described in Section 4.2 below, and subject to the construction of the Water Infrastructure Improvements pursuant to Section 4.3 below, the City reserves, for the benefit of the Property, capacity in the City's water distribution system capable of serving Full Development of the Property, and the City will take no action (including, but not limited to, reserving capacity for, or providing service to, any other developers or water customers) that would interfere with the reservation and providing service to the Property as described above. Subject to obtaining sufficient water service pursuant to the Supply Contract described in Section 4.2 below and construction of the Water Infrastructure Improvements pursuant to Section 4.3 below, water service will be provided to the Property as described above on a continuous, uninterrupted, and non-discriminatory basis and without restrictions on use (subject only to such emergency use rules, including rationing, as may be adopted by the City Council and uniformly applied to all water customers of the City).

Section 4.2 Water Supply Contract. Pursuant to the terms of the CCN Agreement, the City has entered into a Treated Water Supply Contract dated May 17, 2005 (the "Supply Contract") with the City of Frisco, Texas ("Frisco") which provides the City with a source of water which is adequate under current applicable regulations to serve Full Development of the Property as well as other present and anticipated future water customers of the City.

Section 4.3 Water Infrastructure Improvements. The following water infrastructure improvements (all of the improvements described in this Section 4.3 shall hereinafter be collectively referred to as the "Water Infrastructure Improvements") shall be constructed pursuant to the terms and provisions of this Section 4.3.

(a) Offsite Water Infrastructure.

The Owner will identify a tract of land located within the Property, or within close proximity to the Property, acceptable to the City (the "Site") on which the City will construct a 200,000 gallon elevated storage tank (the "EST"). The Site will be more or less square and shall not exceed 100' by 100, and the size and shape of the site shall be mutually agreed to by the Owner and City, but shall be sized and located to enable the EST to be positioned a minimum of 100 feet from any existing or future structure. Prior to the City's approval of the final plat containing the 300th lot within the Property, the Owner will convey, or cause to be conveyed, the Site to the City. The conveyance of the Site will be by a Special Warranty Deed together with a Texas standard owner's title policy with a T-19.1 endorsement, survey deletion endorsement (T-3) and tax deletion endorsement (T-30), all as approved by the City's attorney. All of the expenses associated with the conveyance of the Site, including the premium for the owner's title

policy, will be paid by the Owner. The City will begin construction of the EST following the Final Platting of the 300th lot within the Property.

The Development will require expansion of the City's existing Rose Lane Pump Station by the installation of a 1350 gallon-per-minute ("GPM") service pump, motor, piping and ancillary facilities (the "Pump Station Expansion"). The City will begin construction of the Pump Station Expansion on or before the Final Platting of the 300th lot within the Property.

The City will permit the display of the Development's name and associated graphics on the EST so long as the Owner pays the costs associated with painting the graphics on the Tank, the City has approved the graphics (approval not to be unreasonably withheld), and the name of the City is also legibly displayed on the EST. The graphics may remain on the Tank as long as they are maintained in good condition. If the Development's name and associated graphics are displayed on the EST, the EST will be repainted with the City's name and logo at the Owner's cost within one (1) year following the sale of the final lot within the Property, and the right of display shall terminate for all purposes.

The City's engineer will design the EST and Pump Station Expansion and the City will advertise for bids as required by state law. The City will select a qualified contractor based on the lowest responsible bid and notify the Owner of the construction cost of the EST and Pump Station Expansion. Owner will be obligated to pay the City the actual costs of the EST (the "EST Costs") and Pump Station Expansion (the "Pump Station Expansion Costs") (together, the "Water Expansion Costs"), but in no event shall the combined cost of the Water Expansion Costs and WWTP Modification Costs (hereinafter defined) exceed $1,731,000, the "not to exceed" cost for the Water Expansion Costs and WWTP Modification Costs (the "Combined Utility Costs"), in the amounts and for the projects described in the Capital Cost Estimate, dated January 13, 2014, attached hereto and included for all purposes as Exhibit "E". The Owner will deliver to the City 100% of the Pump Station Expansion Costs within thirty (30) days following receipt of the City's notification for the Pump Station Expansion. The Owner will deliver to the City 100% of the EST Costs upon final platting of the 300th lot within the Property. The Owner may also require the City to initiate construction of the Water Infrastructure Improvements by providing a written notice to proceed and payment of 100% of the applicable Water Expansion Costs to the City. A notice to proceed will not be issued by the City to the contractor for the EST or Pump Station Expansion until the Owner has deposited funds with the City in an amount equal to the EST Costs or Pump Station Costs, respectively. The City will deposit any Water Expansion Costs received from Owner into a separate construction account from which the City will pay the approved payment requests submitted by the contractor. The Owner will have the right to audit the account during normal business hours of the City upon the City's receipt of written notice at least 72 hours prior to the proposed time of the audit. Should any reasonably necessary change order be executed between the City and the Contractor that increases the cost of the EST and Pump Station Expansion, then the Owner will pay to the City the additional funds required to complete the construction of the EST and Pump Station Expansion as Water Expansion Costs, as limited by the Combined Utility Costs. Any excess funds provided by Owner to City for construction of the EST and Pump Station Expansion remaining after completion of the EST and Pump Station Expansion may be utilized for the WWTP Modification, but any funds exceeding the Water Expansion Costs not used to construct the

WWTP Modification will be returned to the Owner within sixty (60) days of completion of the EST and Pump Station Expansion, WWTP Modification and TCEQ final approval.

(b) Property Water Distribution System. Owner shall construct (in phases, as needed, based on Owner's development schedule for the Property) all water lines and related equipment and facilities located within the Property that are necessary to provide retail water service within the Property (collectively, the "Property Water Distribution System"). Without limiting the foregoing, the following provisions shall apply to the Property Water Distribution System:

(i) Plans and specifications for the Property Water Distribution System shall be prepared by a duly licensed Texas professional engineer. The plans and specifications shall comply with the requirements of this Agreement and shall be submitted to and approved by the City (which approval shall not unreasonably withheld or delayed) and the TCEQ, as required. The City will cooperate fully with Owner to approve the plans and specifications and other documents as provided above. The Owner will provide (and dedicate to the City) such easements or other rights-of-way within the Property as reflected or to be reflected on the final plat(s) of the Property that are reasonably necessary for the maintenance and operation of the Property Water Distribution System. Copies of all approved plans and specifications for the Property Water Distribution System shall be provided to the Owner and the City.

(ii) Construction contracts shall be awarded in accordance with the competitive bidding requirements applicable to the City (including, if required, payment and performance bonds) so that costs paid or incurred under such contracts are eligible for reimbursement from the proceeds of PID Bonds and/or from other PID funds generated from other PID revenues or sources. Without limiting the foregoing, Owner will pay all reasonable costs and expenses in connection with the design and construction of the Property Water Distribution System. Furthermore, the City shall cooperate fully with Owner to provide such documentation as may reasonably be required by Owner or the TCEQ so that the costs of the Property Water Distribution System paid by Owner are eligible for reimbursement from the proceeds of PID Bonds and/or from other PID funds generated from other PID revenues or sources, which documentation shall include, but not be limited to, evidence of the reservation of capacity in the City's water distribution system and the Property Water Distribution System to serve the Full Development of the Property.

(iii) During construction, the City will have the continuous right to inspect the Property Water Distribution System. If the City does not inspect the Property Water Distribution System, then the Property Water Distribution System shall be deemed to have been constructed in a good and workmanlike manner in accordance with the Governing Regulations and City-approved plans at the time of conveyance of the Property Water Distribution System. The Owner will exercise good faith efforts to provide timely prior written notice to the City of the performance of any and all tests, including, but not limited to required pressure and water quality tests. If the Property Water Distribution System is being constructed in a manner inconsistent with Governing Regulations or the City-approved plans and specifications, the City may stop any work on the Property Water Distribution System until the such time as the Owner and the Owner's

contractor(s) agree to construct the Property Water Distribution System in accordance with the Governing Regulations and/or the City approved plans and specifications. In addition, the City may require that any substandard work be removed or corrected prior to resuming construction of the remainder of the Property Water Distribution System yet to be constructed.

(iv) Upon completion of construction and successful testing (if applicable), the Property Water Distribution System shall be inspected by the City within fifteen (15) days of written request by Owner, and the City may object in good faith within such fifteen (15) day period to any portion of the Property Water Distribution System which has not been constructed substantially in accordance with the approved plans and specifications relating thereto. If the City fails to deliver a written objection notice to Owner within such fifteen (15) day period, the City shall be deemed to have approved the Property Water Distribution System. If a written objection notice is delivered to Owner within such fifteen (15) day period, the Owner shall use reasonable good faith efforts to correct any objections within a reasonable period of time after receipt of such objection notice, and the process set forth above shall be repeated until the City has approved or has been deemed to have approved the Property Water Distribution System. Notwithstanding anything contained herein to the contrary, approval of the Property Water Distribution System shall not be unreasonably withheld or delayed, and objections to the Property Water Distribution System may only be made if they are reasonable and made in good faith and only to the extent the applicable objectionable components of the Property Water Distribution System are not constructed substantially in accordance with applicable regulations and the approved plans and specifications relating thereto.

(v) Upon inspection and approval (or deemed approval) of the Property Water Distribution System by the City, (A) the Property Water Distribution System will be conveyed to and accepted by the City, free of liens or other monetary encumbrances shall become a part of the City's water distribution system, and (B) thereafter the City shall be responsible for maintenance, repair and operation of the Property Water Distribution System subject to the two-year maintenance bond required by the City. Upon such conveyance, a complete set of as-built construction drawings shall be provided to Owner and the City of the Property Water Distribution System.

(vi) All expenses incurred by the City relating to the inspection or approval of the Property Water Distribution System will be paid by the City as part of the City Inspection Fee or Plan Review Fee and Owner will not be responsible for the payment or reimbursement of any inspection fees, permit fees or plan review fees, other than the City Inspection Fee and Plan Review fee. The City Inspection Fee charged by the City within the Property shall be as set forth in Section 2.8(b) herein and the Plan Review Fee shall be as set forth in Section 2.8(c) herein and Exhibit D.

Section 4.4 Fees and Charges. Except as otherwise provided herein and expressly provided in Section 2.8 or this Section 4.4, no fees, charges or assessments shall apply to or be incurred or charged in connection with the Full Development of the Property or the design and construction of the Water Infrastructure Improvements or the providing of water service to serve Full Development of the Property.

(a) Impact Fees. Except as specifically set forth in this Agreement, the City agrees that there are no capital improvements or facility expansions necessitated by or attributable to the Full Development of the Property. Consequently, except as set forth in Section 2.8 or this Section 4.4, there are no water impact fees (or other similar capital recovery fees, charges or assessments of any kind) due and payable in connection with (i) the development of any portion of the Property, (ii) the design and construction of the Water Infrastructure Improvements, (iii) tapping into, connecting to or using the Water Infrastructure Improvements, and/or (iv) the City's obligation to provide water service to serve the Full Development of the Property.

(b) City Retail Water Rate. The City shall charge and collect such charges from, the water customers living in the area served by the City for water usage by such customers based on the "Retail Water Rate" for users within the corporate limits or ETJ of the City as established by the City from time to time.

(c) Water Meter Fee. The City will purchase all water meters for use on the Property, which meters shall be installed by the City upon request by the Owner and/or the builders building homes on the lots in the Property. Each initial first time connection within the Property to the Property Water Distribution System shall require payment to the City (by the Owner at or prior to the time of such connection) of a water meter fee (the "Water Meter Fee") in the amount of Three Hundred Fifty and No/100 Dollars ($350.00) per connection (or such other amount as the Owner and City may agree upon from time to time). The Owner may, but is not obligated to, prepay the Water Meter Fee (the "Prepaid Water Meter Fee"). Such Prepaid Water Meter Fee payment would be made within fifteen (15) days after approval by the City of each final plat for each phase developed within the Property. The amount of each Prepaid Water Meter Fee payment shall be equal to the product obtained by multiplying the Water Meter Fee amount by the number of residential lots included on the applicable Approved Final Plat. Water Meter Fees related to landscaping and irrigation systems shall not be included in any Prepaid Water Meter Fee amount and will be paid for by the Owner at or prior to the time of such connection. The Owner hereby reserves the right to collect from the builder(s), at each closing of the purchase of a lot by such builder(s), a fee in an amount solely determined by the Owner (the "Builder Water Meter Fee") applicable to each lot acquired by the builder(s) to reimburse the Owner for the Water Meter Fee.

(d) Water Connection Fees. Each initial first time connection within the Property to the Property Water Distribution System shall require payment to the City (by the Owner at or prior to the time of such connection) of a connection fee (the "Water Connection Fee") in the amount of Four Hundred and No/100 Dollars ($400.00) per connection (or such other amount as the Owner and City may agree upon from time to time). The Water Connection Fee (i) compensates the City for reserving to Owner capacity in the City's water distribution system and (ii) reimburses the City for a portion of the costs and expenses paid or incurred by the City to operate and maintain the City's water distribution system. The Owner may, but is not obligated to, prepay the Water Connection Fee (the "Prepaid Water Connection Fee"). Such Prepaid Water Connection Fee payment would be made within fifteen (15) days after approval by the City of each final plat for each phase developed within the Property. The amount of each Prepaid Water Connection Fee payment would be equal to the product obtained by the multiplying the Water Connection Fee amount by the number of residential lots included on the applicable Approved Final Plat. The Owner reserves the right to be reimbursed for the amount of the Water

Connection Fees prepaid and/or advanced by the Owner, as applicable, by collecting from each builder a per lot fee at the closing of the purchase of a lot by such builder. In this regard, the Owner reserves the right to collect such Water Connection Fees from the builder(s) at each closing of the purchase of lots by such builder(s), and the Owner shall be entitled to retain from the amounts collected from the builder(s) that portion of such Water Connection Fees prepaid and/or advanced by the Owner, as applicable. Notwithstanding the foregoing, the City may charge homeowners in the Property connection and reconnection fees for new or reconnection service by such homeowners after the initial first time connection referenced above, provided that such connection and reconnection fees shall not exceed the fees charged by the City to the City's other water customers located within the corporate limits of the City for such services.

Section 4.5 Construction Water. To the extent available in the City's current water distribution system, the City agrees to sell "construction water" out of the City's water distribution system to Owner throughout development of the Property or until such time as the Water Facilities are completed and water is supplied to the Property, which sale shall occur upon the same terms and conditions as the City sells construction water to other developers and builders within the corporate limits or ETJ of the City.

Section 4.6 Existing Water Capacity. The City represents that it currently has the capacity to provide water service to serve up to 450 single-family equivalent connections within the Property or will make all reasonable efforts to provide such capacity pursuant to the Owner's development schedule and completion of the Water Infrastructure Improvements. The City further commits that landowners and residents within the Property will pay water rates consistent with water rates charged to other customers within the City limits or ETJ.

ARTICLE V
WASTEWATER SERVICE INFRASTRUCTURE

Section 5.1 Commitment for Wastewater Service. The City shall provide wastewater service to serve Full Development of the Property. Wastewater service for Full Development of the Property shall be provided in phases as the Property is developed based on Owner's development schedule. The City reserves to Owner, for the benefit of the Property, capacity in the City's existing wastewater collection and wastewater treatment system (as described in Section 5.4 of this Agreement) and in the City's expanded and upgraded wastewater collection and wastewater treatment system (as described in Section 5.2(a) of this Agreement) capable of serving Full Development of the Property, and the City will take no action (including, but not limited to, reserving capacity for, or providing service to, any other developers or wastewater customers) that would interfere with the reservation and providing of service to the Property as described above. Wastewater service will be provided for the benefit of the Property as described above on a continuous, uninterrupted, and non-discriminatory basis and without restrictions (subject only to such emergency use rules as may be adopted by the City Council and uniformly applied to all wastewater customers of the City) or events beyond the control of the City including acts of God that may temporarily interrupt wastewater service).

Section 5.2 Wastewater Infrastructure Improvements. The following wastewater infrastructure improvements (all of the wastewater improvements described in this Section 5.2

shall hereinafter be collectively referred to as the "Wastewater Infrastructure Improvements") shall be constructed pursuant to the terms and provisions of this Section 5.2.

(a) Offsite Wastewater Infrastructure. The City is currently designing and shall construct or cause to be constructed one or more modifications (the "WWTP Modification") of the City's existing wastewater treatment plant to provide additional treatment capacity adequate to serve the Full Development of the Property. The City shall, at the Owner's expense as described in this Section, construct all necessary offsite infrastructure to serve the Full Development of the Property pursuant to the Owner's development schedule, including the WWTP Modification (the "Offsite Wastewater Infrastructure").

The City will select a qualified contractor based on the lowest responsible bid and notify the Developer of the construction cost of the WWTP Modification. Owner will be obligated to pay the City the actual costs of the WWTP Modification (the "Wastewater Modification Costs") but in no event shall the Combined Utility Costs exceed $1,731,000, in the amounts and for the projects described in the Capital Cost Estimate, dated January 13, 2014, attached hereto and included for all purposes as Exhibit "E". The Owner will deliver to the City 100% of the Wastewater Modification Costs within thirty (30) days following receipt of the City's notification or upon the final platting of the 200th lot within the Property. A notice to proceed will not be issued by the City to the contractor until the Owner has deposited funds with the City in an amount equal to the Wastewater Modification Costs. The City will deposit the Wastewater Modification Costs received from Owner into a separate construction account from which the City will pay the approved payment requests submitted by the contractor. The Owner will have the right to audit the account during normal business hours of the City upon the City's receipt of written notice at least 72 hours prior to the proposed time of the audit. Should any reasonably necessary change order be executed between the City and the Contractor that increases the cost of the WWTP Modification, then the Owner will pay to the City the additional funds required to complete the construction of the WWTP Modifications as Wastewater Modification Costs, as limited by the Combined Utility Costs. Any excess funds provided by Owner to City for construction of the WWTP Modification remaining after completion of the WWTP Modification may be utilized for the EST and Pump Station Expansion, but any funds exceeding the Wastewater Modification Costs will be returned to the Owner within sixty (60) days of completion of the EST and Pump Station Expansion, WWTP Modification and TCEQ final approval.

The City will begin construction of the WWTP Modification on or before the Final Platting of the 200th lot within the Property. The Owner may also require the City to initiate construction of the WWTP Modification by providing a written notice to proceed and payment of 100% of the applicable Wastewater Modification Costs to the City.

(b) Property Wastewater Collection System. Owner shall construct or cause to be constructed (in phases, as needed, based on Owner's development schedule for the Property) all wastewater collection lines and related equipment and facilities (collectively, the "Property Wastewater Collection System") that are necessary to provide retail wastewater service within the Property. It is anticipated that, in connection with the construction of the Property Wastewater Collection System, Owner will be required to access and make certain improvements to the sanitary sewer lift stations located in Tract 1X, Block A of Hidden Cove

Phase One and in Lot 3X, Block J of The Shores at Hidden Cove Phase Seven. To the extent required, the City hereby grants Owner permission to access each of the lift stations to make the necessary improvements. Without limiting the foregoing, the following provisions shall apply to the Property Wastewater Collection System:

(i) Plans and specifications for, and all other documents submitted in connection with, the Property Wastewater Collection System shall be prepared by a duly licensed Texas Professional Engineer. The plans and specifications shall comply with applicable regulations and the requirements of this Agreement and shall be submitted to and approved by the City (which approval shall not be unreasonably withheld or delayed). The City will cooperate fully with Owner to approve the plans and specifications and other documents as provided above, and Owner will provide (and dedicate to the public and/or the City) such easements or other rights-of-way within the Property as reflected or to be reflected on the final plat(s) of the Property that are reasonably necessary for the maintenance and operation of the Property Wastewater Collection System. Copies of all City and TCEQ approved plans and specifications for the Property Wastewater Collection System shall be provided to the Owner and the City.

(ii) Construction contracts shall be awarded in accordance with the competitive bidding requirements applicable to the City (including, if required, payment and performance bonds) so that costs paid or incurred under such contracts are eligible for reimbursement from the proceeds of PID Bonds and/or from other PID funds generated from other PID revenues or sources. Without limiting the foregoing, Owner will pay all reasonable costs and expenses in connection with the design and construction of the Property Wastewater Collection System. Furthermore, the City shall cooperate fully with Owner to provide such documentation as may reasonably be required by Owner or the TCEQ so that the costs of the Property Wastewater Collection System paid by Owner are eligible for reimbursement from the proceeds of PID Bonds and/or from other PID funds generated from other PID revenues or sources, which documentation shall include, but not be limited to, evidence of the reservation of capacity in the City's wastewater collection and treatment system and the Property Wastewater Collection System to serve the Full Development of the Property.

(iii) During construction, the City will have the continuous right to inspect the Property Wastewater Collection System. If the City does not inspect the Property Water Distribution System, then the Property Wastewater Collection System shall be deemed to have been constructed in a good and workmanlike manner in accordance with the Governing Regulations and City-approved plans at the time of conveyance of the Property Wastewater Collection System. The Owner will exercise good faith efforts to provide timely prior written notice to the City of the performance of any and all tests. If the Property Wastewater Collection System is being constructed in a manner inconsistent with the Governing Regulations or the City approved plans and specifications, the City may stop any work on the Property Wastewater Collection System until such time as the Owner and the Owner's contractor(s) agree to construct the Property Wastewater Collection System in accordance with the Governing Regulations and/or the City-approved plans and specifications. In addition, the City may require that the any

substandard work be removed or corrected prior to resuming construction of the remainder of the Property Wastewater Collection System yet to be constructed.

(iv) Upon completion of construction and all required tests (as applicable), the Property Wastewater Collection System shall be inspected by the City within fifteen (15) days of written request by Owner, and the City may object in good faith within such fifteen (15) day period to any portion of the Property Wastewater Collection System which has not been constructed substantially in accordance with the approved plans and specifications relating thereto. If the City fails to deliver a written objection notice to Owner within such fifteen (15) day period, the City shall be deemed to have approved the Property Wastewater Collection System. If a written objection notice is delivered to Owner within such fifteen (15) day period, the Owner shall use reasonable good faith efforts to correct any objections within a reasonable period of time after receipt of such objection notice, and the process set forth above shall be repeated until the City has approved or is deemed to have approved the Property Wastewater Collection System. Notwithstanding anything contained herein to the contrary, approval of the Property Wastewater Collection System shall not be unreasonably withheld or delayed, and objections to the Property Wastewater Collection System may only be made if they are reasonable and made in good faith and only to the extent the applicable objectionable components of the Property Wastewater Collection System are not constructed substantially in accordance with the approved plans and specifications relating thereto.

(v) Upon inspection and approval (or deemed approval) of the Property Wastewater Collection System by the City as provided above, (A) the Property Wastewater Collection System will be conveyed to the City as provided above, free of liens or other monetary encumbrances, and shall become a part of the City's wastewater collection and treatment system, and (B) the City shall thereafter be responsible for maintenance, repair and operation of the Property Wastewater Collection System. Upon such conveyance, a complete set of as-built construction drawings shall be provided to Owner and the City of the Property Wastewater Collection System.

(vi) All expenses incurred by the City relating to the inspection or approval of the Property Wastewater Collection System will be paid by the City as part of the City's City Inspection Fee or Plan Review Fee and Owner will not be responsible for the payment or reimbursement of any inspection fees, permit fees or plan review fees other than the City Inspection Fee and Plan Review Fee. The City Inspection Fee charged by the City within the Property shall be as set forth in Section 2.8(b) above and the Plan Review Fee charged by the City within the Property shall be as set forth in Section 2.8(c) herein and Exhibit D.

Section 5.3 Fees and Charges. Except as otherwise provided herein or expressly provided in Section 2.8 herein or this Section 5.3, no fees, charges or assessments shall apply to or be incurred or charged in connection with the Full Development of the Property, the design, construction or reimbursement of the Wastewater Infrastructure Improvements, including the Property Wastewater Collection System, or the provision of wastewater service to serve the Full Development of the Property.

(a) Impact Fees. The City agrees that there are no capital improvements or facility expansions necessitated by or attributable to the Full Development of the Property or the design or construction of the Wastewater Infrastructure Improvements for which the City is paying the costs associated therewith. Except as set forth in Section 2.8 or this Section 5.3, there are no wastewater impact fees (or other similar capital recovery fees, charges or assessments of any kind) due and payable in connection with (i) the development of any portion of the Property, (ii) the design, construction or reimbursement of Wastewater Infrastructure Improvements, including the Offsite Wastewater Infrastructure, (iii) tapping into, connecting to or using the Wastewater Infrastructure Improvements or the City's existing wastewater collection and treatment system, and/or (iv) the City's obligation to provide wastewater collection and treatment service to serve the Full Development of the Property.

(b) Retail Wastewater Rate. The City shall charge and bill, and shall collect such charges from, the wastewater customers living in the Property for wastewater usage by such customers at the same rate charged to customers within the corporate limits of the City or ETJ.

(c) Wastewater Connection Fees. Each initial first time connection within the Property to the Property Wastewater Distribution System shall require payment to the City (by the Owner at or prior to the time of such connection) of a connection fee (the "Wastewater Connection Fee") in the amount of Four Hundred and No/100 Dollars ($400.00) per connection (or such other amount as the Owner and the City may agree upon from time to time). The Wastewater Connection Fee (i) compensates the City for reserving to Owner capacity in the City's wastewater collection and treatment system, and (ii) reimburses the City for a portion of the costs and expenses paid or incurred by the City to operate and maintain the City's wastewater collection and treatment system. The Owner may, but is not obligated to, prepay the Wastewater Connection Fee (the "Prepaid Wastewater Connection Fee"). Such Prepaid Wastewater Connection Fee payment would be made within fifteen (15) days after approval by the City of each final plat for each phase developed within the Property. The amount of each Prepaid Water Connection Fee payment would be equal to the product obtained by the multiplying the Water Connection Fee amount by the number of residential lots included on the applicable Approved Final Plat. The Owner reserves the right to be reimbursed for the amount of the Wastewater Connection Fee or any Prepaid Wastewater Connection Fee prepaid and/or advanced by the Owner, as applicable, by collecting from each builder a per lot fee at the closing of the purchase of a lot by such builder. In this regard, the Owner reserves the right to collect a wastewater connection fee from the builder(s) at each closing of the purchase of lots by such builder(s), and the Owner shall be entitled to retain from the amounts collected from the builder(s) that portion of such Wastewater Connection Fees prepaid and/or advanced by the Owner. Notwithstanding the foregoing, the City may charge homeowners in the Property connection and reconnection fees for new or reconnection service by such homeowners after the initial first time connection referenced above, provided that such connection and reconnection fees shall not exceed the fees charged by the City to the City's other wastewater customers located within the corporate limits of the City or ETJ for such services.

Section 5.4 Existing Treatment Capacity. The City's existing wastewater collection and treatment system has the capacity to serve the Full Development of the Property or will have such capacity to serve the Full Development of the Property when the WWTP Modification is complete.

Section 5.4 **Existing Wastewater Capacity** The City represents that it currently has the capacity to provide wastewater service to serve up to 450 single-family equivalent connections within the Property or will make all reasonable efforts to provide such capacity pursuant to the Owner's development schedule and completion of the Wastewater Infrastructure Improvements. The City further commits that landowners and residents within the District will pay wastewater rates consistent with wastewater rates charged to other customers within the City limits or ETJ.

ARTICLE VI
ROADWAY INFRASTRUCTURE

Section 6.1 **Property Roadway Improvements**. (a) Owner shall construct or cause to be constructed (in phases, as needed, based on Owner's development schedule for the Property, all streets and related improvements located within the Property (the "Property Roadway Improvements"). Owner and the City agree that Owner is not obligated or required to construct new streets or related improvements or improve existing streets or related existing improvements located outside the Property. Without limiting the foregoing, the following provisions shall apply to the Property Roadway Improvements:

(i) Plans and specifications for the Property Roadway Improvements shall comply with the requirements of this Agreement and shall be submitted to and approved by the City, which approval shall not be unreasonably withheld or delayed. The City shall cooperate fully with Owner to approve the plans and specifications and other documents as provided above, and Owner will provide (and dedicate to the City) such easements or other rights-of-way within the Property as reflected or to be reflected within the final plat(s) of the Property that are reasonably necessary for the maintenance or operation of the Property Roadway Improvements. Copies of all approved plans and specifications for the Property Roadway Improvements shall be provided to the Owner and to the City.

(ii) It is currently anticipated that the project will be a gated community and therefore all Property Roadway Improvements behind the community gates will be private streets and will be dedicated to and maintained by the Hidden Cove Homeowner's Association ("HOA") and in which case, the costs of such Property Roadway Improvements will not be eligible for reimbursement from the proceeds of PID Bonds or from other PID funds generated from other PID revenues or sources. All Property Roadway Improvements not located behind gates will be dedicated to the public. If the Property Roadway Improvements are public streets, then construction contracts for the Property Roadway Improvements shall be bid and awarded in accordance with the competitive bidding requirements applicable to the City, including, if required, payment and performance bonds, such that costs paid or incurred under such contracts are eligible for reimbursement from the proceeds of PID Bonds or from other PID funds generated from other PID revenues or sources. Without limiting the foregoing, Owner shall pay all reasonable costs and expenses in connection with the design and construction of the Property Roadway Improvements. The City shall cooperate fully with Owner to provide such documentation as may reasonably be required by Owner so that the costs of the Property Roadway Improvements paid by Owner are eligible for reimbursement from the proceeds of PID Bonds or from other PID funds generated from other PID revenues or sources.

During construction, the City will have the continuous right to inspect the Property Roadway Improvements. If the City does not inspect the Property Roadway Improvements, then the Property Roadway Improvements shall be deemed to have been constructed in a good and workmanlike manner in accordance with the Governing Regulations and City-approved plans at the time of conveyance of the Property Roadway Improvements. If the Property Roadway Improvements are being constructed in a manner inconsistent with Governing Regulations or the City-approved plans and specifications, the City may stop any work on the Property Roadway Improvements until such time as the Owner and the Owner's contractor(s) agree to construct the Property Roadway Improvements in accordance with the Governing Regulations and/or the City-approved plans and specifications. In addition, the City may require that any substandard work be removed or corrected prior to resuming construction of the remainder of the Property Roadway Improvements yet to be constructed.

(iii) Upon completion of construction, the Property Roadway Improvements shall be inspected by the City within fifteen (15) days of the receipt by the City of a written request by Owner for inspection. The City may object in good faith within such fifteen (15) day period to any portion of the Property Roadway Improvements which have not been substantially constructed in accordance with the approved plans and specifications relating thereto. If the City fails to deliver a written objection notice to Owner within such fifteen (15) day period, the City shall be deemed to have approved the Property Roadway Improvements If a written objection notice is delivered to Owner within such fifteen (15) day period, the Owner shall use reasonable good faith efforts to correct any objections within a reasonable period of time after receipt of such objection notice, and the process set forth above shall be repeated until the City has approved or deemed to have approved the Property Roadway Improvements. Notwithstanding anything contained herein to the contrary, approval of the Property Roadway Improvements shall not be unreasonably withheld or delayed, and objections to the Property Roadway Improvements may only be made if they are reasonable, made in good faith, and applicable only to the extent that the Property Roadway Improvements are not constructed substantially in accordance with applicable regulations and the approved plans and specifications relating thereto.

(iv) Upon inspection and approval of the Property Roadway Improvements by the City, the Property Roadway Improvements will be conveyed to and accepted by the City or the HOA, as applicable, free of liens and other monetary encumbrances other than the reimbursement or acquisition obligation to Owner from the proceeds of PID Bonds or other PID revenues (if any). Thereafter, the HOA shall be responsible for maintenance, repair and operation of the Property Roadway Improvements. In the event that the Property Roadway Improvements are conveyed to the City, the HOA shall be responsible for maintenance, repair and operation of the Property Roadway Improvements. Upon such conveyance, a complete set of as-built construction drawings shall be provided to Owner and the City of the Property Roadway Improvements

(v) All expenses incurred by the City relating to the inspection or approval of the Property Roadway Improvements will be paid by the City as part of the City Inspection Fee and Plan Review Fee and Owner will not be responsible for the payment or reimbursement of any inspection fee, permit fee, or plan submittal fee other than the City Inspection Fee and Plan Review Fee. The City Inspection Fee charged by the City within the Property shall be as set forth

in Section 2.8(b) herein and the Plan Review Fee charged by the City within the Property shall be as set forth in Section 2.8(c) herein and Exhibit D.

Section 6.2 Fees and Charges. (a) Except as otherwise provided in this Agreement or expressly provided in Section 2.8 and this Section 6.2, no fees, charges or assessments shall apply to or be incurred by Owner, or be charged by the City, in connection with or for the design or construction of the Property Roadway Improvements.

(b) The City acknowledges and agrees that there are no impact or capital improvements fees attributable to the development of the Property or the design or construction of the Property Roadway Improvements for which the City is paying the costs associated therewith, and that no City funds have been or will be expended in providing roadway improvements to the Property. Consequently, there are no roadway impact fees (or any other similar capital recovery fees, charges or assessments of any kind) due and payable by the Owner and the Owner's successors and/or assigns in connection with the development of the Property or the design or construction of the Property Roadway Improvements or any offsite roadway improvements.

ARTICLE VII
PUBLIC IMPROVEMENT DISTRICT

Section 7.1 PID Creation. If the Owner or other majority landowner within the Property requests the creation of Hackberry Public Improvement District No. 3 (the "PID") pursuant to Chapter 372 of the Texas Local Government Code and covering the Property, such request will be submitted to the City for its good faith consideration and possible approval. If approved by the City Council of the City, the City Council will adopt an acceptable "Resolution Creating the Hackberry Public Improvement District No. 3" (the "PID Creation"), which PID Creation shall be attached hereto as Exhibit F when it is adopted by the City. The PID Creation may not be withdrawn or modified after it has been adopted by the City, and no further action shall be required by the City to evidence the PID Creation. If the City adopts the PID Creation, then the City shall cooperate with Owner in good faith in the creation of the PID including, but not limited to, the execution by the City of such further ordinances, resolutions, documents, or instruments as may be reasonably requested from time to time by Owner, the Texas Attorney General, or any political subdivision or governmental agency having jurisdiction over the PID or any PID Bonds issued by the PID. Notwithstanding the foregoing, nothing contained in this Article VII shall obligate the City to consent to the creation of the PID without the due consideration of the City Council.

Section 7.2 PID Powers and Authority. The PID may finance improvements so authorized by the Constitution and the laws of the State of Texas, including Chapter 372, Texas Local Government Code (the "PID Improvements"). The PID Improvements shall be designed, constructed and/or acquired using funds advanced by Owner ("Owner Advances"). The PID shall be authorized to repay Owner Advances, together with interest, (i) from a special assessment approved by the City and levied by the City Council after the creation of the PID against each final platted lot within the PID, which special assessment shall be a fixed amount and shall be collected annually by the City for a period not to exceed 30 years after such assessments are levied, (ii) from special assessments approved by the City and levied annually by the City Council upon each final platted lot

within the PID, and (iii) from the proceeds of PID Bonds approved by the City Council that are secured by special assessments and that are otherwise issued in compliance with this Agreement and/or applicable law. PID Improvements may also be designed and constructed using proceeds from PID Bonds (approved by the City Council and secured by special assessments) that are issued without any Owner Advances having been made.

Section 7.3 Addition of Land to the PID. Owner agrees that it will not, without the prior written consent of the City, petition the City for the inclusion within the PID of any land outside the Property and within the corporate limits or ETJ of the City. Moreover, the Parties acknowledge and agree that the City Council has the right to refuse to approve the inclusion of any additional land within the PID if such inclusion would be detrimental to the PID or the PID's ability to fulfill its obligations herein.

Section 7.4 PID Administrative Costs. The Parties intend that all costs and expenses paid or incurred by the City in connection with the creation, existence, and operation of the PID will be paid (i) by Owner if not paid from, and subject to Owner's right to reimbursement from, the sources described in subparagraphs (ii) and (iii) hereafter, (ii) from the proceeds of PID Bonds, and/or (iii) from assessments levied and collected by the City against property within the PID. If the City levies an assessment against property within the PID to pay for the PID Improvements and PID Services and thereafter, on an annual basis, collects the assessments and forwards the same to Owner, the City shall be entitled to retain from such collections an amount equal to one and one-half percent (1.5%) of the amount assessed and collected each year by the City. If the City issues PID Bonds to pay for the PID Improvements and PID Services, the City shall be entitled to retain from the proceeds of the sale of the PID Bonds an amount equal to all the third-party expenses paid or incurred by the City as ordinary and customary costs of issuance of such PID Bonds.

Section 7.5 Use of PID Assessments and PID Bond Proceeds. The City shall deposit all PID assessments collected by the City (net of the amount retained by the City pursuant to Section 7.4 of this Agreement) and the proceeds of all PID Bonds issued (net of all Bond issuance costs and the amounts retained by the City pursuant to Section 7.4 of this Agreement) into a separate account (the "PID Account") selected by the bond underwriters for the investors who own the PID Bonds for the sole purpose of constructing and/or acquiring the PID Improvements, performance of the PID Services and/or reimbursing Owner for Owner Advances for the design, construction and/or acquisition of the PID Improvements and performance of the PID Services. The PID Account shall be created pursuant to a written escrow agreement among the City, Owner, and such financial institution (which escrow agreement shall include, but not be limited to, the procedures by which the City will approve or pre-approve the Owner Advances. Owner and/or the City shall act as the construction manager for the construction or acquisition of the PID Improvements and performance of the PID Services; provided, however, the construction manager shall be required to comply with all applicable competitive bid requirements.

Section 7.6 PID Bonds. (a) General Provisions. All PID Bonds shall be issued in accordance with the requirements of applicable state law and shall be approved by the City Council and by the Texas Attorney General. The terms and conditions of all PID Bonds shall be approved by the governing body of the City before they are issued. If the City approves the issuance of PID Bonds, such PID Bonds shall be repaid by special assessments levied and collected by the City on real property within the Property and the City shall have no liability

whatsoever for the payment of such PID Bonds from any other source of revenue. The City may, upon approval by Owner, approve the issuance of PID Bonds secured by special assessments to be levied and collected by the City against real property within the PID and by any other form of legally available security for the PID Bonds. The City agrees that it will proceed, when requested to do so by Owner, with the issuance of PID Bonds to finance the construction or acquisition of the PID Improvements and PID Services and with the issuance, from time to time when requested by Owner, of additional PID Bonds to refund previously issued PID Bonds ("PID Refunding Bonds"). Owner reserves the right to purchase all or any portion of any PID Bonds or PID Refunding Bonds pursuant to a negotiated bond purchase agreement to be executed between the City and Owner. In the event Owner purchases any of the PID Bonds or Refunding PID Bonds, the net proceeds from the sale will be placed in the PID Account. The City reserves the right to select its own bond counsel, financial advisor and underwriter of the PID Bonds whose fees and expenses will be paid from the proceeds of the sale of the PID Bonds.

(b) Bond Ordinance. The City shall deliver to Owner and the PID a substantially complete draft of each ordinance approving the issuance of PID Bonds or PID Refunding Bonds (a "Bond Ordinance"), including but not limited to any trust indenture or agreement authorized therein, setting forth (i) the principal amount and the maturity of the PID Bonds and PID Refunding Bonds to be issued, (ii) the special funds (including any sinking or reserve fund for future bond payments) created for the payment and security of the PID Bonds and PID Refunding Bonds, (iii) the provisions related to refunding, early retirement or defeasance of the PID Bonds and PID Refunding Bonds, (iv) the provisions relating to the creation and establishment of special accounts for the deposit of the proceeds of the PID Bonds and PID Refunding Bonds, and (v) the procedures to be followed for disbursement or withdrawal of funds deposited in such accounts. The City shall designate the bond counsel for the Bond Ordinance, subject to the Owner's reasonable approval.

ARTICLE VIII
EVENTS OF DEFAULT, REMEDIES, AND INDEMNITIES

Section 8.1 Events of Default. No Party shall be in default under this Agreement until (a) written notice of the alleged failure of such Party to perform under this Agreement has been given to such Party, which written notice shall specify in reasonable detail the nature of the alleged failure, and (b) such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature and extent of the alleged failure, but in no event less than thirty (30) calendar days for a monetary or non-monetary default after written notice of the alleged failure has been given). In addition, for non-monetary defaults, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom notice is given begins to cure the alleged failure within the thirty (30) day cure period and thereafter diligently pursues a cure of the alleged failure.

Section 8.2 Remedies. (a) If a Party is in default under this Agreement (as set forth in Section 8.1 of this Agreement), then any non-defaulting Party shall be entitled to seek (i) immediate injunctive relief and mandamus, (ii) specific performance, and (iii) to the maximum extent permitted by law, actual damages (but excluding special or consequential damages).

Except as provided in this Agreement, no Party, however, shall be entitled to terminate this Agreement as a result of such breach or default.

(b) No default under this Agreement by any Party shall affect, in any way, (i) the obligation of the City to process preliminary and final plats and plans and specifications with respect to portions of the Property that are not directly impacted by the default and which are owned by a party other than the defaulting Party, (ii) the obligation of the City to provide services to a fully developed phase within the Property (including water and wastewater service), (iii) the validity or effectiveness of any consent given by the City (whether in this Agreement, a Consent Ordinance, or otherwise) to the creation of the PID, (iv) the continuation of the ETJ status of the Property and its immunity from annexation as provided by this Agreement or any Consent Ordinance, (v) the continued existence of the PID within the City's ETJ as provided by this Agreement or any Consent Ordinance, and (vi) the rights and powers of the PID pursuant to the Constitution of the State of Texas, the general laws of the State, this Agreement, or any Consent Ordinance including, but not limited to, the issuance of bonds by the PID and the levy and collection by the PID of special assessments.

(c) The remedies set forth in this Section 8.2 are the sole and exclusive remedies of the Parties for a default under this Agreement.

Section 8.3 Dispute Resolution. (a) Except as provided in Section 8.2 above and Section 8.3(b) below, any and all disputes arising between the Parties with respect to this Agreement or any matters covered hereby shall be resolved by the Parties in the manner set forth in Exhibit G attached hereto and incorporated herein by reference; provided, however, any party shall have the right to obtain injunctive relief from any court of competent jurisdiction prior to pursuing the Dispute Resolution Procedures set forth on Exhibit G with respect to any dispute which cannot be resolved through the Dispute Resolution Procedures set forth on Exhibit G within a time frame that will avoid irreparable harm to the Party seeking injunctive relief (and, in such circumstances, the Dispute Resolution Procedures set forth in Exhibit G shall be complied with after the injunctive relief is sought and either obtained or delivered).

(b) Notwithstanding the foregoing, a breach or default by any Party in the payment of any amounts due hereunder shall not be subject to the provisions of Section 8.3(a) above and may be remedied by the pursuit of any actions and/or remedies available at law or in equity.

Section 8.4 Limited Waiver of Immunity. The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the City unconditionally and irrevocable waives all claims of sovereign and governmental immunity they may have (including, but not limited to, immunity from suit) to the extent, but only to the extent, that a waiver is necessary to enforce this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained in this Section 8.4 shall not waive any immunities that the City may have with respect to claims of injury to persons, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity in this Section 8.4 is not enforceable by any party not a party to this Agreement or any party that may be construed to be a third party beneficiary to this Agreement.

Section 8.5 **Force Majeure**. If a party hereto is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, except the obligation related to performance of a monetary obligation, then the obligations of such party, to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall include, without limitation of the generality thereof, (i) acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, and (ii) breakage or accidents to machinery, pipelines or canals, and (iii) any other inabilities of either party, whether similar to those enumerated or otherwise, any of which events in subclauses (i) (ii) or (iii) which are not within the control of the party claiming such inability and which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

ARTICLE IX
BINDING AGREEMENT, TERM, AND ASSIGNMENT

Section 9.1 **Beneficiaries**. This Agreement shall bind and inure to the benefit of the City and Owner and their successors and assigns.

Section 9.2 **Term**. (a) The term of this Agreement shall commence on the Effective Date and shall continue during the Governing Regulations Period or during the period PID Bonds secured by revenues generated by the Property are outstanding unless terminated on an earlier date by express written agreement executed by the City and Owner and all of their respective successors and assigns. Upon the expiration of the term of this Agreement, this Agreement may be extended, at Owner's or the City's request and with City Council approval, for two (2) successive periods not to exceed fifteen (15) years each.

(b) In the event this Agreement is terminated by agreement as provided in Section 9.2(a) of this Agreement, the City shall, upon request, promptly execute and file of record, in the Deed Records of the County, a document confirming the termination of this Agreement.

(c) This Agreement may be terminated by the mutual agreement of the parties.

Section 9.3 **Assignment**. (a) Owner shall have the right to assign this Agreement, in whole or in part, or to assign any of the rights, title, and interests of Owner under this Agreement, in whole or in part, to any Person without the prior written consent of the City, provided Owner gives written notice to the City of such assignment and provided the assignee agrees, in writing, to assume the obligations of Owner under this Agreement. No assignment of this Agreement or any of the rights, title, and interests of Owner under this Agreement shall

relieve Owner of any obligations to the City that accrued prior to the effective date of such assignment. Owner shall, however, be released from all liability under this Agreement that may arise from and after the effective date of any assignment.

(b) If Owner proposes to sell any or all of the Property, Owner shall have the option to (i) terminate this Agreement prior to or in connection with the sale of such portions of the Property, or (ii) sell such portions of the Property subject to the terms of this Agreement, provided, that in such event, Owner's assignee shall not acquire the rights of Owner hereunder unless Owner expressly states in the conveyance deed or by separate instrument placed of record that said assignee is assigned and is receiving Owner's rights and obligations for purposes of this Agreement and notice is sent by Owner to the City.

9.4 Recordation, Releases, and Estoppel Certificates. (a) Binding Obligations. Pursuant to the requirements of Section 212.172(f) of the Texas Local Government Code, 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; provided, however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property except for land use and development regulations that apply to specific lots. For purposes of this Agreement, the Parties agree (i) that the term "End-Buyer" means any owner, developer, tenant, user, or occupant, (ii) 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 governmental authority having jurisdiction and for which all planned and approved improvements have been constructed and accepted to the extent that a building permit may be obtained for such lot, and (iii) that the term "land use and development regulations that apply to specific lots" means the Governing Regulations, Building Codes and Special Regulations.

(b) Releases. From time to time upon written request of Owner (or any other owner, developer, tenant, user, or occupant of land within the Property), the City shall execute, in recordable form, a partial release from this Agreement of a fully developed and improved lot owned by an End-Buyer within a fully developed and improved phase (subject only to the continued applicability of the Governing Regulations, Building Codes, the Special Regulations and the PID assessment).

(c) Estoppel Certificates. From time to time upon written request of Owner (or any other owner, developer, tenant, user, or occupant of land within the Property which land is not a fully developed and improved lot owned by an End-Buyer within a fully developed and improved phase), the City will execute a written estoppel certificate to such person or entity (i) identifying the obligations of Owner under this Agreement that have been fully performed, (ii) identifying the obligations of Owner under this Agreement that remain to be performed, including the interim status of any obligations for which performance has begun, (iii) 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 (iv) stating, to the extent true, that to the best knowledge and belief of the City, that Owner is in compliance with their respective duties and obligations under this Agreement.