



Control Number: 45870



Item Number: 14

Addendum StartPage: 0

PUC DOCKET NO. 45870
SOAH DOCKET NO. 473-16-4619.WS

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FORMAL COMPLAINT OF KER-SEVA
LTD., ADC WEST RIDGE VILLAS, L.P.,
AND CENTER FOR HOUSING
RESOURCES, INC. AGAINST THE
CITY OF FRISCO, TEXAS

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BEFORE THE
PUBLIC UTILITY COMMISSION
FILING CLERK

PUBLIC UTILITY COMMISSION
OF TEXAS

**SECOND AMENDED FORMAL COMPLAINT AGAINST THE CITY OF FRISCO,
TEXAS**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Complainants Ker-Seva Ltd., ADC West Ridge Villas, L.P., and Center for Housing Resources, Inc. (collectively, "Complainants"), and file this Second Amended Formal Complaint against the City of Frisco, Texas, pursuant to PUC Procedural Rules 22.242(e) and 22.76, and would respectfully show as follows:

INTRODUCTION

Complainant Ker-Seva Ltd. filed the original Formal Complaint in this matter on April 19, 2016, in an effort to secure water and sewer service from the City of Frisco, Texas (the "City" or "Frisco") for its property located at 9331 Westridge Boulevard and within the City's water and sewer certificates of convenience and necessity ("CCNs") and extraterritorial jurisdiction ("ETJ"). Complainant Ker-Seva Ltd. was denied service in violation of Texas Water Code §§ 13.250 and 13.254 and 16 Texas Administrative Code §§ 24.85 and 24.114. Since filing the original Formal Complaint, Ker-Seva Ltd. sold its property to Complainant ADC West Ridge Villas, L.P., whose general partner is a wholly-owned subsidiary of Complainant Center for Housing Resources, Inc. Complainant ADC West Ridge Villas, L.P. made a request for water and sewer service on June 15, 2016, for its proposed development of the West Ridge

Villas, a planned affordable housing apartment complex. Frisco denied this request. Construction contractors hired by ADC West Ridge Villas, L.P. requested – and initially obtained – a temporary water meter from Frisco to connect to Frisco’s existing facilities immediately adjacent to the property at issue. Frisco has since confiscated the temporary water meter and refused to provide water service for the construction. Frisco continues to deny Complainants service through various tactics designed to delay and drive-up the costs of service.

PUC PROCEDURAL RULE 22.242(E) REQUIREMENTS:

22.242(e)(2)(A): Complainant Ker-Seva, Ltd. is a Texas limited partnership whose general partner is Ker-Seva Management, Ltd., Co. and whose registered agent is Jastinder Jawanda. Complainant ADC West Ridge Villas, L.P. is a Texas limited partnership whose general partner is CHR West Ridge Villas, LLC, which is a wholly-owned subsidiary of Complainant Center for Housing Resources, Inc. Complainant ADC West Ridge Villas, L.P.’s registered agent is Terri Anderson. Complainant Center for Housing Resources, Inc. is a Texas non-profit corporation whose registered agent is Terri Anderson.

22.242(e)(2)(B): Complainants do not currently have an account because the City has repeatedly refused to provide service to Complainants.

22.242(e)(2)(C): Complainants’ representative is the undersigned counsel and his contact information is as follows:

Leonard H. Dougal
Jackson Walker, L.L.P.
100 Congress Ave., Suite 1100
Austin, Texas 78701
Tel: (512) 236-2233
Fax: (512) 391-2112
Email: ldougal@jw.com

- 22.242(e)(2)(D): Complainants file this Amended Formal Complaint against the City of Frisco, Texas.
- 22.242(e)(2)(E)-(F): Complainants are not seeking relief against an electric utility, therefore these provisions are not applicable.
- 22.242(e)(2)(G): Complainant Ker-Seva Ltd. attempted informal resolution through the PUC in Complaint No. CP2016010328. On February 12, 2016, the Customer Protection Division of the PUC recommended that a formal complaint be filed.
- 22.242(e)(2)(H): A detailed statement of facts is provided below and relevant documentation is attached hereto.
- 22.242(e)(2)(I): Complainants are seeking an order from the PUC requiring the City to provide water and sewer service without further delay.

STATEMENT OF FACTS

Complainant Ker-Seva Ltd. owned approximately 8.5 acres of land in Collin County, Texas, within the ETJ of Frisco, which was made up of three lots (the "Property"). Ker-Seva Ltd. conveyed Lot 3 to Frisco through a conveyance plat for future right of way expansion along Westridge Boulevard on the northern boundary of Lots 1 and 2.¹ Ker-Seva Ltd. currently owns Lot 1, Block A with the address of 9421 Westridge Boulevard ("Lot 1") and recently sold Lot 2, Block A with the address of 9331 Westridge Boulevard ("Lot 2") to ADC West Ridge Villas L.P.² Lot 2, the subject of this Amended Formal Complaint, is located within water CCN No. 11772 and sewer CCN No. 20591 issued to Frisco.

¹ Attached hereto as Exhibit "A" is a plat showing Lot 1 and Lot 2. The northern strip between Lots 1 and 2 and Westridge Boulevard is the former Lot 3.

² Attached hereto as Exhibit "B" is the Warranty Deed demonstrating Complainant ADC West Ridge Villas L.P.'s ownership of Lot 2.

In 2006, Baljeet K. Jawanda and Daljit S. Hundle, the then-owners of the Property, entered into an Annexation Agreement with the City covering the entire Property and in 2008 entered into a Development Agreement with the City pertaining to Lot 1.³ The Annexation Agreement provided that following annexation, Frisco would provide water and sewer service to the Property. The Annexation Agreement also established that the then-owner could obtain water and sewer service for the Property from the City of McKinney until such time as Frisco's lines would be available to the Property. The Development Agreement provided the then-owners would pay the costs to construct necessary water lines, sewer lines, stormwater drainage, and paving in order to provide water and sewer service to Lot 1. In doing so, the then-owners constructed the water and sewer facilities necessary to serve Lot 1 and constructed two (2) water stub-outs and a sewer manhole with the intent of using those same facilities to serve Lot 2. Those facilities belong to the City of Frisco, are immediately adjacent to Lot 2, and could be used to serve Lot 2.

Ker-Seva Ltd. currently receives water and sewer service to Lot 1 through the facilities which connect to the water and sewer lines along Westridge Boulevard belonging to the City of McKinney. On November 6, 2015, Ker-Seva Ltd. sought service for Lot 2.⁴ However, Frisco refused to provide service to Lot 2 and since that time has repeatedly refused to provide service. Frisco indicates the City of McKinney lacks capacity to allow Complainants to set a meter on Lot 2. However, Complainants have evidence that capacity is not, in fact, a problem.⁵ Frisco further insists that Complainants must construct extensive new water and sewer infrastructure to

³ Attached hereto as Exhibit "C" is the Annexation Agreement; Attached hereto as Exhibit "D" is the Development Agreement.

⁴ Attached hereto as Exhibit "E" is Complainant's November 6, 2015, Application for service.

⁵ Attached hereto as Exhibit "F" is a Sanitary Sewer Basin Study performed by Sanchez & Associates that demonstrates the sewer lines have sufficient capacity to handle a 248-bedroom apartment complex.

connect to the City of Frisco's infrastructure. In doing so, Frisco ignores the fact that the infrastructure constructed by Ker-Seva Ltd under the Development Agreement is directly adjacent to Lot 2 and could be used to serve Lot 2.

On June 10, 2016, after purchasing Lot 2, ADC West Ridge Villas, L.P. submitted a formal request for water and sewer service to Lot 2 and its proposed development of an affordable housing apartment complex, referred to as the West Ridge Villas.⁶ Frisco representatives first told ADC West Ridge Villas, L.P. that Frisco did not serve the address for Lot 2 and instead water and sewer service would need to be obtained from the City of McKinney, Texas.⁷ Shortly thereafter, Frisco informed ADC West Ridge Villas L.P. that the communication was a mistake, that Frisco would serve Lot 2, but that service could not be provided until the water and sewer utility lines approved in the preliminary plat associated with the development of the West Ridge Villas were constructed.⁸ The water and sewer utility lines as depicted in the preliminary plat are unreasonable and are merely an attempt to make it impossible for Complainants to obtain service to Lot 2.⁹

Most recently, Frisco has refused to provide temporary construction water service to Lot 2. ADC West Ridge Villas, L.P.'s construction contractors initially obtained a water meter for temporary water service from Frisco's representatives and explicitly identified the location where the water meter would be used. After first providing the water meter, Frisco confiscated the water meter and has now refused to provide construction water service to Lot 2. In fact, Frisco has threatened to have anyone who connects a Frisco water meter to a Frisco fire hydrant

⁶ Attached hereto as Exhibit "G" is ADC West Ridge Villas L.P.'s application for service.

⁷ Attached hereto as Exhibit "H" is an e-mail received from Frisco's utility billing department indicating McKinney would provide service to the address.

⁸ Attached hereto as Exhibit "I" is an e-mail received from Frisco's Assistant City Manager.

⁹ Attached hereto as Exhibit "J" is the utility plan as part of the preliminary plat approved by Frisco.

arrested and has stated that it will not provide temporary water service to Lot 2 until “legal issues” – presumably this Formal Complaint – are resolved.

Despite several requests for further information concerning Frisco’s allegations that the existing facilities lack capacity, Frisco has failed to provide details and merely references its ordinances and the sections pertaining to development within its ETJ.¹⁰ However, Complainants have complied with those regulations. Under Section 7 of the Ordinances, Frisco will extend water and sewer service outside of its corporate limits in certain circumstances, particularly where an annexation agreement is in place.¹¹ Section 8 provides that water and wastewater extensions will be paid for by a developer. Here, Complainants’ predecessor-in-interest entered into an annexation agreement that acknowledged Frisco would provide service upon annexation and allowed for temporary service through the City of McKinney’s lines. Complainants’ predecessor-in-interest also entered into a development agreement whereby Complainant paid for the costs to extend water and sewer facilities to connect to the City of McKinney’s water and sewer lines for service. Thus, with respect to the Property, Complainants are in compliance with Frisco’s ordinances. Therefore, Frisco’s continued refusal to provide service is arbitrary, capricious, and in violation of its duty to provide continuous and adequate service within its CCN.

RELIEF SOUGHT

Complainants respectfully request that the PUC order the City of Frisco to comply with its statutory duty as the CCN-holder to provide continuous and adequate service to Lot 2. The Texas Water Code states that “any retail public utility that possesses . . . [a CCN] shall serve

¹⁰ Attached hereto as Exhibit “K” are Sections 7 and 8 of Frisco’s Ordinances which Frisco has provided to Complainant.

¹¹ Exhibit “K” § 7.01(b)(4) and (6).

every consumer within its certified area and shall render continuous and adequate service within the area or areas.”¹² The PUC’s rules further emphasize this duty and the PUC’s authority: “Any retail public utility which possesses . . . [a CCN] . . . must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area”¹³ After notice and a hearing, the PUC may require a retail public utility to implement financial, managerial, and technical practices to ensure continuous and adequate service is provided to any areas.¹⁴

The PUC’s rules also require that “every retail public utility shall serve each qualified service applicant within its certificated area as soon as practical after receiving a completed application.”¹⁵ Where service requires a tap but not line extensions, construction, or new facilities, service should be connected within five working days.¹⁶ Where construction is required, the retail public utility is required to provide a written explanation of the construction required and an expected date of service.¹⁷ When failure to provide service within certain time frames constitutes a refusal to provide service, the PUC may assess administrative penalties, against the CCN holder.¹⁸

Frisco’s actions, in addition to violating the above-mentioned statutes and regulations, amount to discrimination against Complainants by treating Complainants differently than other similarly-situated developers and landowners. Every property surrounding Lot 2 receives water and sewer service either through Frisco’s existing infrastructure or through the City of

¹² Tex. Water Code § 13.250(a).

¹³ 16 Tex. Admin. Code § 24.114(a) (“TAC”).

¹⁴ 16 TAC § 24.114(b).

¹⁵ 16 TAC § 24.85(a).

¹⁶ 16 TAC § 24.85(a)(4).

¹⁷ 16 TAC § 24.85(a)(5).

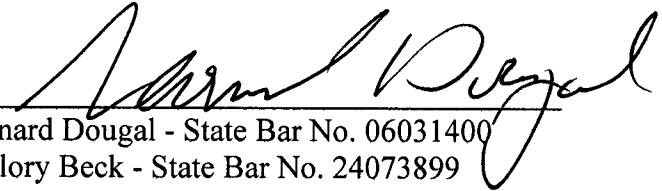
¹⁸ 16 TAC § 24.85(b).

McKinney's water and sewer lines on Westridge Boulevard. Frisco's refusal to use its own lines – even if they connect to the City of McKinney – discriminates against Complainants.

For these reasons, Complainants request that the PUC require the City of Frisco to provide continuous and adequate water and sewer service to Complainants' property located within Frisco's water and sewer CCNs and Frisco's ETJ in accordance with the statutory and regulatory requirements without the construction of additional infrastructure, or, in the alternative if the PUC finds additional infrastructure is required, to order Frisco to agree to a reasonable location for such additional infrastructure and an estimated cost and timeline for service.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: 

Leonard Dougal - State Bar No. 06031400

Mallory Beck - State Bar No. 24073899

100 Congress, Suite 1100

Austin, Texas 78701

E: ldougal@jw.com

T: (512) 236 2233

F: (512) 391-2112

ATTORNEYS FOR COMPLAINANTS
KER-SEVA, LTD., ADC WEST RIDGE
VILLAS L.P., AND CENTER FOR HOUSING
RESOURCES, INC.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was served as shown below on
this 1st day of July 2016:

Diane Callander Wetherbee
Abernathy Roeder Boyd & Hullett P.C.
1700 Redbud Blvd., Suite 300
P.O. Box 1210
McKinney, Texas 75069-1210
dwetherbee@abernathy-law.com
Attorneys for City of Frisco

Via email and U.S. First Class Mail

Sam Chang
Attorney – Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
sam.change@puc.texas.gov
Attorneys for Public Utility Commission of Texas

Via email and U.S. First Class Mail



Leonard Dougal

EXHIBIT “A”

EXHIBIT “B”



20160519000612640 05/19/2016 11:25:44 AM D1 1/3

RTT 1018-134708

Warranty Deed with Vendor's Lien

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: the 17th day of May, 2016

Grantor: Ker-Seva, Ltd.

Grantor's Mailing Address: 9421 Westridge Blvd., McKinney, TX 75070

Grantee: **ADC West Ridge Villas, LP**

Grantee's Mailing Address: 347 Walnut Grove Ln., Coppell, TX 75019

Consideration: TEN and no/100 DOLLARS and other good and valuable consideration and further consideration of a promissory note ("TDHCA HOME Note") of even date herewith in the original principal sum of Three Million and no/100 DOLLARS (\$3,000,000.00) executed by Grantee and payable to the Texas Department of Housing and Community Affairs ("TDHCA"), a public and official agency of the State of Texas, secured by the vendor's lien herein retained in the amount of One Million and no/100 Dollars (\$1,000,000.00) and is additionally secured a deed of trust (with security agreement and assignment of rents) of even date herewith from Grantee to Timothy Irvine, Trustee

Property (including any improvements): Lot 2, Block A, Westridge Addition, Frisco, Collin County, Texas, containing approximately 4.916 acres.

Reservations from and Exceptions to Conveyance and Warranty:

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

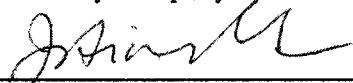
The vendor's lien against the Property and superior title to the Property are retained until that portion of the TDHCA HOME Note recurred by the vendor's lien is fully paid according to its terms, at which time this deed will become absolute.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED on the dates of our respective acknowledgements below.

GRANTOR: KER-SEVA, LTD. a Texas Limited Partnership

By: Ker-Seva Management, LTD, a Texas Limited Liability Company

By: 
Jastinder S. Jawanda, Manager

GRANTEE:

ADC West Ridge, LP, a Texas limited partnership

By: CHR West Ridge Villas, LLC, a Texas limited liability company, its General Partner

By: Center for Housing Resources, Inc., a Texas Not for Profit Corporation, its Manager

By: 
Terri L. Anderson, Chairperson

THE STATE OF TEXAS §

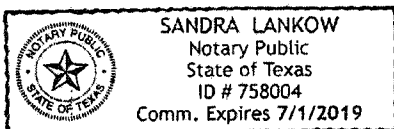
KNOW ALL MEN BY THESE PRESENTS

COUNTY OF DENTON §

This instrument was acknowledged before me on this 17th day of May, 2016, by Jastinder S. Jawanda, Manager of KER-SEVA MANAGEMENT, LTD, a Texas Limited liability Company of KER-SEVA, LTD., a Texas limited partnership.

Seal


Notary Public, State of Texas



THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

KNOW ALL MEN BY THESE PRESENTS

This instrument was acknowledged before me on this 18th day of May, 2016, by Terri L. Anderson, Chairperson, Center for Housing Resources, Inc., Manager of CHR West Ridge, LLC, General Partner of ADC West Ridge, LP.



Kristin Nicole Kirby

Notary Public, State of Texas

Seal

AFTER RECORDING RETURN TO:

The Law Offices of Claire G. Palmer, PLLC
Attorney for Borrower
2224 Clearspring Drive South
Irving, TX 75063

Filed and Recorded
Official Public Records
Stacey Kemp, County Clerk
Collin County, TEXAS
06/19/2016 11:25:44 AM
\$34.00 DF0STER
20160619000612640



Stacey Kemp

EXHIBIT “C”

AFTER RECORDING,
RETURN TO:
~~Seattlingelle~~ City Secretary
City of Frisco, Texas
6101 Frisco Square Blvd - 5th Floor
Frisco, Texas 75034



20061215001762800 12/15/2006 08 39.57 AM AG 1/24

STATE OF TEXAS §
 § ANNEXATION AGREEMENT
COUNTY OF COLLIN §

This Annexation Agreement (the "Agreement") is made and entered into as of this 13th day of October, 2006, (the "Effective Date") by and between the City of Frisco, Texas, (the "City") and Baljeet K. Jawanda and Daljit S. Hundle (collectively the "Owner") on the terms and conditions hereinafter set forth.

WHEREAS, Owner owns approximately 8.579 acres, more or less, being Lots 1-3, Block A, Westridge Addition in the extraterritorial jurisdiction of the City, Collin County, Texas which is more particularly described in **Exhibit "A"** which is attached hereto and fully incorporated herein for all purposes (hereinafter defined as the "Property"); and

WHEREAS, City and the Owner desire that the property be developed as set forth herein; and

WHEREAS, Owner desires to construct a Montessori School on Lot 1 of the Property; and

WHEREAS, pursuant to Section 212.172 of the Texas Local Government Code, the City is authorized to make a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality for purposes set forth in that section; and

WHEREAS, the parties desire to agree on the matters set forth in this Agreement pursuant to Section 212.172 of the Texas Local Government Code and for the purposes set forth in that section.

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner agree as follows:

1. Land Subject to Agreement. The land that is subject to this Agreement is approximately 8.579 acres of land, more or less, located in the Westridge Addition, Collin County, Texas and more particularly described in **Exhibit "A"**, attached hereto and incorporated herein for all purposes (the "Property"). Owner represents that there are no other owners of the Property.

2. Use and Development. The use and development of the Property before and after annexation shall conform to the uses, density, layout, permitting requirements (including but not limited to submittal of site plans and plats) and development standards (including but not limited to masonry requirements, parking standards and landscaping standards) set forth by the ordinances of City (including but not limited to the Comprehensive Zoning Ordinance and the Subdivision Regulations) as they exist or may be amended. Prior to annexation, the Property shall be developed as if it has been designated with Retail (R) zoning.

3. Annexation and Zoning. City will not annex the Property, unless requested to do so by Owner, during the term of this Agreement provided that Owner complies with the terms and conditions of this Agreement. The parties agree that City, in its sole discretion, shall determine whether Owner is in compliance with the Agreement and whether it will approve annexation of the Property.

4. Water and Sewer Service. Following annexation of the Property by City, City agrees to provide sanitary sewer service for the Property in the same manner and in accordance to the same regulations as any retail development in the City and in accordance with the annexation service plan. City agrees provide water service for the Property in the same manner and in accordance to the same schedule as any retail development in the City if it can lawfully do so. Owner may temporarily connect to the City of McKinney's water and sanitary sewer system to serve the Property until such time as City lines are available to the Property. Upon being requested to do so by City, Owner agrees to execute convey an easement to City on that portion of the Property reasonably needed by City, in City's sole discretion, to be used as a utility easement for water and sewer service, free from any liens or other encumbrances, for the construction and/or extension of water or sewer facilities. Said easement shall be materially in the same form as **Exhibit "B"**, attached hereto and incorporated herein for all purposes, and shall contain legal descriptions and diagrams of the easement.

5. Right-of-Way Dedication for Westridge Blvd. Upon being requested to do so by City, Owner agrees to dedicate to City that portion of the Property reasonably needed by City, in City's sole discretion, to be used as right-of-way for Westridge Blvd, free from any liens or other encumbrances, for the construction and/or extension of Westridge Blvd ("ROW Property"). Said right-of-way dedication shall be by warranty deed materially in the same form as **Exhibit "C"**, attached hereto and incorporated herein for all purposes, and shall contain legal descriptions and diagrams of the right-of-way dedication.

6. Impact Fees. The Property shall be subject to impact fees adopted by Ordinance No. 05-07-53, as it exists or may be amended.

7. Other Development Fees. City ordinances covering property taxes, park dedication and/or payment in lieu of dedication of land, utility rates, permit fees and the like are not affected by this Agreement and shall be applied to the Property in the same manner as any other Property located within the City's corporate boundaries. Further this Agreement does not waive or limit any of the obligations of Owners to City under any other ordinance, whether now existing or in the future

arising.

8. Term. This Agreement is an agreement authorized by Section 212.172 of the Texas Local Government Code. The term of this Agreement shall be five (5) years from the effective date. The term of this Agreement shall not be affected by the fact that some or all of the Property is annexed into the corporate limits of the City.

9. Default. If any party breaches any of the terms of this Agreement, then that party shall be in default (the "Defaulting Party") of this Agreement (an "Event of Default"). If an Event of Default occurs, the nondefaulting party shall give the Defaulting Party written notice of such Event of Default and if the Defaulting Party has not cured such Event of Default within thirty (30) days of said written notice, this Agreement is breached. Each party is entitled to all remedies available at law or in equity.

10. Notice. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage pre-paid, certified mail, return receipt requested, addressed to either party, as the case may be, at the addresses contained below:

City: City of Frisco
6101 Frisco Square Blvd.
Frisco, TX 75034
Attn: City Manager

With copy to: Julie Fort
Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud Blvd.
Suite 300
P.O. Box 1210
McKinney, TX 75070-1210

Owner: Baljeet K. Jawanda and Daljit S. Hundle
4588 Penbrook Court
Plano, Texas 75024

11. Miscellaneous.

(a) Assignment. This Agreement is assignable. If all or any portion of the Property is transferred, sold or conveyed, the Owner shall give notice immediately to City of the name, address, phone number and contact person of the person or entity acquiring an interest in the Property. This Agreement shall run with the land and shall be binding on and inure to the benefit of the Owners' successors and assigns.

(b) Compliance with Ordinances. Except as provided for in this Agreement, the parties agree that the Owners shall be subject to all ordinances of City. All construction will be in accordance with applicable ordinances and regulations of Frisco, whether now existing or in the future arising.

(c) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the mutual written agreement of the parties hereto.

(d) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

(e) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

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

(g) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(h) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

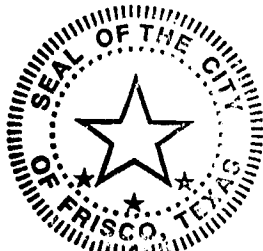
(k) Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing their respective obligations under this Agreement.

(l) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document

(m) Incorporation of Recitals. The Recitals above are incorporated herein as if repeated verbatim.

(n) No Chapter 245 Permit. This Agreement, and any requirement contained in this Agreement, shall not constitute a "permit" as defined in Chapter 245, Texas Local Government Code. **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.



CITY OF FRISCO, TEXAS

By: George Purefoy
George Purefoy, City Manager

ATTEST:

Estela Barrera for Nan Parker
City Secretary

APPROVED AS TO FORM:

Julie Y. Fort
Julie Y. Fort
Abernathy, Roeder, Boyd & Joplin, P.C.

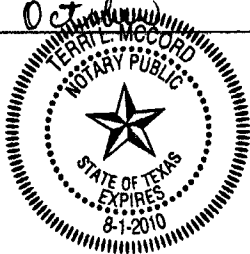
OWNERS:

Bhawanda
Baljeet K. Bhawanda, Individually
Daljit S. Mundle
Daljit S. Mundle, Individually

STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **George Purefoy**, City Manager of the City of Frisco, Texas, being the person whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **City of Frisco, Texas**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2nd day of October, 2006.

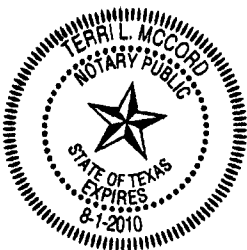


Terril L. McCord
Notary Public in and for the State of Texas
My Commission Expires: Aug. 1. 2010

STATE OF TEXAS §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **Baljeet K. Jawanda**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4th day of October, 2006.



Terril L. McCord
Notary Public in and for the State of Texas
My Commission Expires: 8/1/10

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **Daljit S. Hundle**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; she acknowledged to me that she has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18th day of October, 2006.





Notary Public in and for the State of Texas
My Commission Expires:
1-29-2010

Exhibit "A"
Legal Description and Diagram

Development Agreement
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EXHIBIT A

LEGAL DESCRIPTION

WHEREAS Baljeet K. Jawanda and Daljits S. Hundle are the owners of a tract or parcel of land situated in the City of Frisco, Collin County, Texas, being part of the A.S. Young Survey, Abstract Number 1037, being all of that tract of land described in deed to said Baljeet K. Jawanda and Daljits S. Hundle recorded in Volume 5912, Page 6577 of the Deed Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a ½ inch iron rod with cap stamped "LONE STAR" set for corner in the southerly right-of-way line of Westridge Boulevard (a 60 foot wide right-of-way) according to the plat thereof recorded in Volume N, page 547 of the plat Records of Collin County, Texas, said iron rod being the northeasterly corner of said Jawanda/Hundle tract and the northwesterly corner of that tract described in deed to Dr. Ernest S. Martin and Janice L. Martin recorded under County Clerk's File Number 94-0061709, Deed Records of Collin County, Texas, from which a ½ inch iron rod with red plastic cap found bears North 22°41'33";

THENCE South 00°02'34" East along the common line of said Jawanda/Hundle and Martin tracts a distance of 336.13 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner in the northerly line of that tract of land described in deed to John Barch and Jana Barch in Volume 5723, Page 4783 of the Deed Records of Collin County, Texas, being the southwesterly corner of said Martin tract and the southeasterly corner of said Jawanda/Hundle tract, from which a ½ inch iron rod with red plastic cap found bears North 13°51'37" East, 0.98 feet;

THENCE South 89°57'25" West along the common line of said Jawanda/Hundle and Barch tracts a distance of 1282.98 feet to a ½ inch iron rod with red plastic cap found for corner in the monumented easterly right-of-way line of Blaise Drive (a measured 87.5 foot wide right-of-way) (unrecorded), being the northwesterly corner of said Barch tract and the southwesterly corner of said Jawanda/Hundle tract;

THENCE North 00°02'07" East along said easterly right-of-way line of Blaise Drive and the westerly line of said Jawanda/Hundle tract a distance of 50.00 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner, being the most westerly northwesterly corner of said Jawanda/Hundle tract and the southwesterly corner of the remainder of that tract of land described in deed to William A. Mains and Paula L. Mains recorded in Volume 1024, Page 753 of the Deed Records of Collin County, Texas;

THENCE North 89°57'25" East along a northerly line of said Jawanda/Hundle tract and the southerly line of said Mains remainder tract, parallel to and 50.00 feet northerly of said Jawanda/Hundle and Barch tracts common line a distance of 190.61 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner, being the southeasterly corner of said Mains remainder tract and an ell corner of said Jawanda/Hundle tract;

THENCE North 02°55'18" East along the easterly line of said Mains remainder tract and a westerly line of said Jawanda/Hundle tract a distance of 284.86 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner in said southerly right-of-way line of Westridge Boulevard, being the northeasterly corner of said Mains remainder tract and the most northerly northwesterly corner of said Jawanda/Hundle tract;

THENCE North 89°52'06" East along said southerly right-of-way line of Westridge Boulevard and the northerly line of said Jawanda/Hundle tract a distance of 277.53 feet to a ½ inch iron rod with yellow plastic cap found at an angle point;

THENCE North 89°52'06" East continuing along said southerly right-of-way line of Westridge Boulevard and the northerly line of said Jawanda/Hundle tract a distance of 800.04 feet to the **POINT OF BEGINNING** and containing 373,682 square feet or 8.579 acres of land.

WESTRIDGE ANNEXATION AGREEMENT

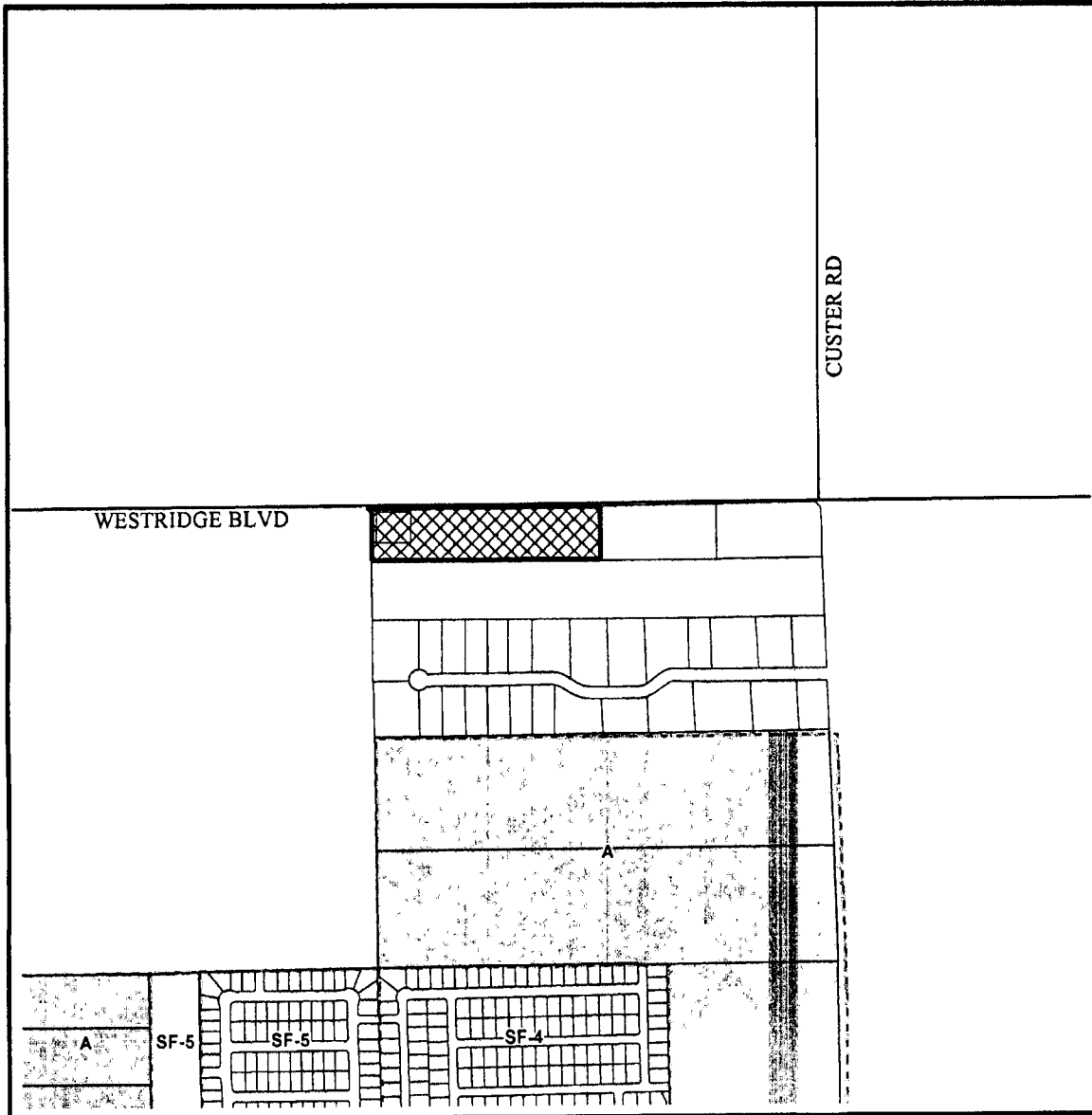


Exhibit "B"
Utility Easement Form
with Temporary Construction Easement

Development Agreement
458197.v3

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**AFTER RECORDING,
RETURN TO:**
Scott Ingalls
City of Frisco, Texas
6101 Frisco Square Blvd
Frisco, Texas 75034

UTILITY EASEMENT

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF DENTON §

THAT, _____, a Texas _____, hereinafter called
“Grantor,” for and in consideration of the sum of **ONE DOLLAR (\$1.00)** and other good and
valuable consideration to Grantor in hand paid by the **CITY OF FRISCO, TEXAS**, a Texas
Municipal Corporation, hereinafter called “Grantee,” the receipt and sufficiency of which are hereby
acknowledged, does **GRANT, DEDICATE, and CONVEY** to the Grantee: (i) the exclusive
easement and right to construct, reconstruct, repair, alter, operate, rebuild, replace, relocate, remove
and perpetually maintain water and sewer facilities (the “Facilities”), together with all incidental
improvements, and all necessary laterals in, upon and across certain real property located in the City
of Frisco, Collin County, Texas, as more particularly described in **Exhibit “A”**, which is attached
hereto and made a part hereof by reference as if fully set forth herein (the “Easement Property”), and
(ii) a temporary construction easement, fifty feet (50') on each side of the Easement Property, for the
initial construction of the Facilities, as more particularly described in **Exhibit “A”** (the “Temporary
Construction Easement”).

Development Agreement
458197.v3

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The Temporary Construction Easement shall expire the completion of the initial construction of the Facilities and acceptance of the Facilities by the City of Frisco.

Grantee will at all times after doing any work in connection with the construction, alteration or repair of the Facilities, restore the Easement Property to as near as reasonably practical the condition in which it was found before such work was undertaken.

This instrument shall not be considered as a deed to the Easement Property or any part thereof, and the right is hereby reserved to Grantor, its successors and assigns, to use such property to landscape and build and construct fences, driveways, parking lots and other associated improvements over or across said easement; provided, however, that in no event shall a wall, structure or building of any type other than those previously described or any piling, pier or isolated footing of any wall, structure or building be placed directly on said Easement Property.

This Easement shall constitute a covenant running with the land and shall benefit and burden the applicable real properties described herein, and shall inure to the benefit of, and be binding upon, Grantee and Grantor, and their respective successors and assigns.

TO HAVE AND TO HOLD the same perpetually unto the Grantee, its successors and assigns, together with the right and privilege at all times (i) to enter the Easement Property and/or Temporary Construction Easement, or any part thereof, for the purpose of constructing, reconstructing, repairing, altering, operating, rebuilding, replacing, relocating, removing and/or maintaining the Facilities and all incidental improvements, and for making connections therewith; and (ii) to enter Grantor's adjacent property solely for the purpose of ingress and egress to the Easement Property and/or Temporary Construction Easement. Grantee, its successors and assigns,

shall have the right to construct, reconstruct, repair, alter, operate, rebuild, replace, relocate, remove and perpetually maintain additional Facilities at all times in the future within the Easement Property.

Grantor does hereby bind itself and its successors and assigns to **WARRANT AND FOREVER DEFEND**, all and the singular, the successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

Grantor does hereby represent and warrant that there are no liens affecting the Easement Property.

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

EXECUTED on the dates appearing in the acknowledgements below, however, to be effective on this ____ day of _____, 2006.

OWNERS:

Baljeet K. Jawanda, individually

Daljit S. Hundle, Individually

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **Baljeet K. Jawanda**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2006.

Notary Public in and for the State of Texas
My Commission Expires:

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **Daljit S. Hundle**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; she acknowledged to me that she has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2006.

Notary Public in and for the State of Texas
My Commission Expires:

JOINDER OF OTHER EASEMENT HOLDERS

The undersigned, being the holder of an easement on the Easement Property evidenced by:

1. Easement and Right of Way dated _____, recorded in Volume ____,
Page ____, _____ County Land Records, in favor of
_____; and
2. Easement for Underground Facilities dated _____, recorded in
Volume _____, Page _____, _____ County Land Records, in favor of
_____.

hereby agrees and consents to the encroachment, if any, of the foregoing ROW Deed.

By: _____
Printed Name: _____
Its: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, the _____ and duly authorized representative of _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of _____, and acknowledged to me that such company executed the foregoing instrument pursuant to its Bylaws or a Resolution of its Board of Directors.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2006.

Notary Public, State of Texas
My Commission Expires: _____

By: _____
Printed Name: _____
Its: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, the _____ and duly authorized representative of _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of _____, and acknowledged to me that such partnership executed the foregoing instrument pursuant to its Bylaws or a Resolution of its Board of Directors.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2006.

Notary Public, State of Texas
My Commission Expires: _____

Exhibit "C"
Warranty Deed Form

Development Agreement
458197 v3

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"Notice of Confidentiality rights: If you are a Natural Person, you may remove or strike any of the following information from this instrument before it is filed for record in the Public Records: Your Social Security Number or your Drivers' License Number."

AFTER RECORDING, RETURN TO:

City Manager
City of Frisco, Texas
6101 Frisco Square Blvd
Frisco, Texas 75034

RIGHT OF WAY WARRANTY DEED

(with Temporary Construction and Grading Easement)

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

That _____, a Texas _____ ("Grantor"), whether one or more, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash in hand to Grantor paid by the **CITY OF FRISCO, TEXAS**, a Texas municipal corporation ("Grantee") the receipt of which is hereby acknowledged, and for which no lien is retained, either expressed or implied, has this day GRANTED and by these presents does GRANT, GIVE, and CONVEY unto the said Grantee all the following described real estate, to-wit:

Being _____ acres of land, more or less, in the _____ Survey, Abstract No. _____, in the City of Frisco, _____ County, Texas, more particularly depicted and described in Exhibits "A" and "B", respectively, attached hereto and incorporated herein for all purposes (the "Property").

Grantor hereby further grants to Grantee a temporary construction and grading easement of _____ feet (____') running adjacent and parallel along the _____ side of the Property, as more particularly depicted in Exhibit "A" attached hereto, with rights of ingress and egress for the construction of roadway and related improvements, such temporary construction and grading easement terminating upon completion and acceptance of said roadway improvements by Grantee.

Development Agreement
458197.v3

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The warranty contained herein is subject to: (i) any and all mineral reservations, restrictions, covenants, conditions and easements, if any, relating to the above-described property, but only to the extent that they are still in effect and shown of record in _____ County, Texas; and (ii) all zoning law regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect and relate to the Property.

TO HAVE AND TO HOLD the above-described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, Grantee's successors, and assigns forever.

And Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or attempting to claim the same or any part thereof.

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

EXECUTED on the dates appearing in the acknowledgements below, however, to be effective on this _____ day of _____, 2006.

OWNERS:

Baljeet K. Jawanda, individually

Daljit S. Hundle, Individually

LIENHOLDER'S CONSENT TO PARTIAL RELEASE OF LIEN:

The undersigned, being the holder(s) of the lien against a portion of the Property and Temporary Construction Easement evidenced by:

Deed of Trust dated _____, recorded under Clerk's File No. _____, from _____, to _____, Trustee, securing payment of one certain promissory note of even date therewith in the principal amount of \$_____, payable to the order of _____; said Note being additionally secured by a Vendor's Lien of even date retained in Deed, executed by _____ to _____, recorded under _____, and subject to all of the terms and conditions and stipulations contained therein, including but not limited to, any future indebtedness also secured by this lien,

hereby consents to the execution of the foregoing Right of Way Warranty Deed and agrees that in the event of a foreclosure of the Property and/or Temporary Construction Easement or any portion thereof and/or the underlying property or any portion thereof (or deed in lieu thereof), the conveyance made by this deed will remain in full force and effect and shall not be extinguished by such foreclosure (or deed in lieu thereof).

_____ Bank, a _____

By: _____

Printed Name: _____

Its: _____

Address: _____

STATE OF TEXAS §

 §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200__, by _____, the _____ and duly authorized representative of _____ Bank, a _____, on behalf of said corporation.

Notary Public, State of Texas

Filed and Recorded
Official Public Records
Brenda Taylor, County Clerk
Collin County, TEXAS
12/15/2006 08:39:57 AM
\$108.00 BNOPP
20061215001762800



Brenda Taylor

EXHIBIT “D”



20080418000469170 04/18/2008 03:58:09 PM AG 1/23

After Recording Return To:
City of Frisco
Engineering Services Department
6161 Frisco Square Boulevard; 3rd Floor East
Frisco, Texas 75034
Attention: Director of Engineering Services

DEVELOPMENT AGREEMENT
(Westridge Addition Lot 1, Block A Public Improvements)

THIS DEVELOPMENT AGREEMENT (this "Agreement"), dated as of _____, 2008 (the "date of the Agreement"), is made and entered into by and between the City of Frisco, Texas, a municipal corporation ("Frisco") and Bahjeet K. Jawanda and Duljit S. Hundle (collectively the "Owner").

WHEREAS, Owner owns 2.159 acres, more or less, being Lot 1, Block A, situated in the A.S. Young Survey, Abstract No. 1037, Collin County, Texas and adjacent to Westridge Boulevard, as more particularly described and depicted on Exhibit "A," attached hereto and incorporated herein for all purposes (the "Property"); and

WHEREAS, Frisco and Owner entered into that certain Annexation Agreement, including the Property, dated October 13, 2006, which agreement is attached hereto and incorporated herein for all purposes; and

WHEREAS, Frisco has quantified estimates for the construction of certain public infrastructure improvements to Westridge Addition, Lot 1, Block A ("Westridge Addition Lot 1, Block A Improvements"), including without limitation, waterline improvements, sanitary sewer improvements, storm drainage improvements, and paving improvements alongside Westridge Boulevard adjacent to the Property (the "Project"); and

WHEREAS, Owner has in conjunction with the construction of the Project and based on the direct benefit to the Property, requested the construction of a twelve-inch (12") waterline for approximately three hundred fifteen linear feet (315') (the "Waterline Improvements"); and

WHEREAS, Owner has in conjunction with the construction of the Project and based on the direct benefit to the Property, requested the construction of an eight-inch (8") sanitary sewer line for approximately three hundred fifteen linear feet (315'), and the construction of one (1) forty-eight inch (48") diameter manhole (the "Sanitary Sewer Improvements"); and

WHEREAS, Owner has in conjunction with the construction of the Project and based on the direct benefit to the Property, requested the construction of twenty four inch (24") reinforced concrete storm drainage piping for approximately three hundred fifteen linear feet (315'), and one (1) at-grade storm drainage inlet being ten linear feet (10') wide (the "Storm Drainage Improvements"); and

DEVELOPMENT AGREEMENT
(Westridge Addition Lot 1, Block A Public Improvements)

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WHEREAS, Owner has in conjunction with the construction of the Project and based on the direct benefit to the Property, requested the construction of twenty five feet (25') wide pavement, back of curb to back of curb for approximately three hundred fifteen linear feet (315') (the "Paving Improvements"); and

WHEREAS, in consideration for the construction of the Waterline Improvements, the Sanitary Sewer Improvements, the Storm Drainage Improvements and the Paving Improvements at the location desired by Owner, Frisco requires Owner to place the construction costs for the Waterline Improvements, the Sanitary Sewer Improvements, the Storm Drainage Improvements, and the Paving Improvements in escrow as hereinafter set forth; and

WHEREAS, Frisco has investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to participate in the construction of the Project as provided herein; and

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Frisco and Owner agree as follows:

1. **Description of Project.** The Project consists of the construction of certain improvements to Westridge Addition Lot 1, Block A, including without limitation, the Waterline Improvements, as more particularly described on Exhibit "B," the Sanitary Sewer Improvements, as more particularly described on Exhibit "C," the Storm Drainage Improvements, as more particularly described on Exhibit "D," and the Paving Improvements, as more particularly described on Exhibit "E." Exhibits "B-E" are attached hereto and incorporated herein for all purposes.

2. **Land Subject to Agreement.** The land that is the subject of this Agreement is the Property. Owner represents it is the sole owner of the Property.

3. **Construction of Project.** Frisco will construct the Project, and Frisco has provided Owner with the estimate of the costs to construct the Waterline Improvements, the Sanitary Sewer Improvements, the Storm Drainage Improvements and the Paving Improvements, which amount is anticipated to be Two Hundred Fourteen Thousand Five Hundred Sixty-Nine and 00/100 Dollars (\$214,569.00), as more particularly described in Exhibit B, Exhibit C, Exhibit D and Exhibit E, all of which are attached hereto and incorporated herein for all purposes (the "Westridge Addition Lot 1, Block A Public Improvements Estimated Construction Costs"). The phrase "construction costs" as used herein shall mean the actual construction costs associated with the Project. The parties hereto acknowledge and agree that Frisco is making no representation and/or warranty as to when the Project will be commenced and/or completed. In this connection, the parties acknowledge and agree that the Project construction schedule shall be solely determined by Frisco.

4. **Owner's Payment of the Project Estimated Construction Costs.** Within fifteen (15) calendar days of the execution of this Agreement, Owner will pay into an escrow account, at the location solely determined by Frisco, funds equal to the Westridge Addition Lot 1, Block A Public Improvements Estimated Construction Costs (the "Escrow Funds"). The

DEVELOPMENT AGREEMENT

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(Westridge Addition Lot 1, Block A Public Improvements)

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Escrow Funds will be available to Frisco to pay for the construction costs associated with the Project, and Frisco shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Escrow Funds in connection with the construction of the Project. Frisco shall further be entitled to, as its sole property, any and all interest earned on the Escrow Funds, and Owner hereby waives and relinquishes any and all rights or claim to interest earned, if any, on the Escrow Funds. In addition, if any amount of the Escrow Funds remains in the account after Frisco has issued a final letter of acceptance for the construction of the Project, including but not limited to the Waterline Improvements, the Sanitary Sewer Improvements, the Storm Drainage Improvements and the Paving Improvements, and paid all of the construction costs associated with the Project, as solely determined by Frisco ("Remaining Escrow Funds"), Owner shall be entitled to, as its sole property, the Remaining Escrow Funds. Frisco may, in its sole discretion, utilize the interest earned on the Escrow Funds, if any, for any purpose.

5. **Default.** In the event Owner fails to comply with any of the provisions of this Agreement, Frisco shall have the following remedies in addition to Frisco's other rights and remedies, at law or in equity:

- (a) to refuse to issue any and all building permits for the Property; and/or
- (b) to, without notice or any other action of Frisco, immediately revoke any and all building permits issued, and any construction and/or development of the Property shall immediately cease; and/or
- (c) to, without notice or any other action of Frisco, immediately revoke any and all certificates of occupancy issued for the Property; and/or
- (d) to file this instrument in the Land Records of Collin County as a lien and/or encumbrance against the Owner and/or the Property; and/or
- (e) to refuse to accept any portion of any public improvements on the Property and/or associated with the development of the Property; and/or
- (f) to refuse to finally accept the Property and/or any portion thereof; and/or
- (g) to immediately, without further notice to Owner, cease any and all design and/or construction of the Waterline Improvements, and/or the Sanitary Sewer Improvements, and/or the Storm Drainage Improvements, and/or the Paving Improvements; and/or
- (h) to seek specific enforcement of this Agreement.

In the event City fails to comply with the terms and conditions of this Agreement, Owner may seek specific enforcement of this Agreement as its sole and exclusive remedy.

6. **Limitation of Liability.** Notwithstanding anything to the contrary herein, the parties agree and acknowledge that City shall not, under any circumstance, be required to tender,

DEVELOPMENT AGREEMENT

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(Westridge Addition Lot 1, Block A Public Improvements)

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and/or be liable to Owner for, any reimbursement of and/or payment of any monies with regard to the matters set forth herein, save and except as provided in Paragraphs 3 and 4 above.

7. **Covenant Running with the Land.** This Agreement shall be a covenant running with the land and the Property and shall be binding upon the Owner, its officers, directors, partners, employees, representatives, agents, successors, assignees, vendors, grantees and/or trustees. In addition the parties shall cause this Agreement to be filed in the Land Records of Collin County.

8. **Limitations of Agreement.** The parties hereto acknowledge this Agreement is limited to the Waterline Improvements, the Sanitary Sewer Improvements, the Storm Drainage Improvements, and the Paving Improvements only. Frisco Ordinances covering property taxes, utility rates and fees, park dedication, perimeter streets, pro rata fees, any and all impact fees and the like are not affected by this Agreement. Further, this Agreement does not waive or limit any of the obligations of Owner to Frisco under any ordinance whether now existing or in the future arising.

9. **Notice.** Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Frisco, to:

City of Frisco
Attention: Director of Engineering Services
6101 Frisco Square Boulevard, 3rd Floor East
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 731-4945

With a copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.
Attention: Rebecca Brewer
1700 Redbud, Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4040

If to Owner, to:

DEVELOPMENT AGREEMENT

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(Westridge Addition Lot 1, Block A Public Improvements)

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Baljeet K. Jawanda and Daljit S. Hindle
4588 Pembroke Court
Plano, Texas 75024
Telephone: (972) 618-7319
Facsimile: (972)

**10. PARTIES' ACKNOWLEDGEMENT OF FRISCO'S COMPLIANCE WITH
FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL,
STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS / OWNER'S WAIVER AND
RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.**

(A) OWNER ACKNOWLEDGES AND AGREES THAT:

**(I) THE WATERLINE IMPROVEMENTS, THE SANITARY SEWER
IMPROVEMENTS, THE STORM DRAINAGE IMPROVEMENTS
AND THE PAVING IMPROVEMENTS TO BE CONSTRUCTED
AND PAID FOR BY OWNER, IN WHOLE OR IN PART, DO NOT
CONSTITUTE A:**

- (A) TAKING UNDER THE TEXAS OR UNITED STATES
CONSTITUTION;**
- (B) VIOLATION OF THE TEXAS WATER CODE, AS IT
EXISTS OR MAY BE AMENDED;**
- (C) NUISANCE; AND/OR**
- (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT
AGAINST CITY FOR A VIOLATION OF ANY FEDERAL
AND/OR STATE CONSTITUTION, STATUTE AND/OR
CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL
ORDINANCE, RULE AND/OR REGULATION.**

**(II) THE AMOUNT OF OWNER'S FINANCIAL OR
INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL
CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS,
IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY
PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S
DEVELOPMENT PLACES ON THE CITY'S INFRASTRUCTURE.**

**(III) OWNER HEREBY AGREES THAT ANY PROPERTY WHICH IT
CONVEYS TO CITY PURSUANT TO THIS AGREEMENT IS
ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY
OWNER FOR SUCH LAND, AND OWNER HEREBY WAIVES ANY
CLAIM THEREFORE THAT IT MAY HAVE. OWNER FURTHER
ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES**

DEVELOPMENT AGREEMENT

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(Westridge Addition Lot 1, Block A Public Improvements)

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TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY CITY RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTEND TO THE IMPACT OF THE DEVELOPMENT OF OWNER'S ADJACENT PROPERTY ON CITY'S INFRASTRUCTURE. DEVELOPER AND CITY FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.

(IV) OWNER SHALL INDEMNIFY AND HOLD HARMLESS CITY FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO OWNERS' RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, AND/OR TRUSTEES, BROUGHT PURSUANT TO THIS PARAGAPH.

(B) OWNER RELEASES CITY FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS.

(C) OWNER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST CITY FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE, AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

(D) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. Vested Rights / Chapter 245 Waiver. The signatories hereto shall be subject to all ordinances of Frisco, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code and nothing in this Agreement provides Frisco with fair notice of any project of the Owner. OWNER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE

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TEXAS LOCAL GOVERNMENT CODE UNDER THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12. **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement, including but not limited to, a proceeding brought pursuant to Paragraphs 5, 10 and 11 above, the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

13. **Incorporation of Recitals.** The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of the Owner.

14. **Owner's Warranties / Representations.** All warranties, representations and covenants made by Owner in this Agreement or in any certificate or other instrument delivered by Owner to City under this Agreement shall be considered to have been relied upon by City and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by City or on City's behalf.

15. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

16. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

17. **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

18. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

19. **Authority to Execute.** This individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

20. **Savings / Severability.** In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect,

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such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

22. **Sovereign Immunity.** The parties agree that Frisco has not waived its sovereign immunity by entering into and performing its obligations under this Agreement, except as to Chapter 271, Subchapter I of the Local Government Code.

23. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

24. **Assignment / Binding Effect.** This Agreement is assignable upon the following conditions:

(a) the assignment of the Agreement must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the reasonable approval of Frisco;

(b) at the time of assignment, Owner must give the assignee written notice that any and all obligations, covenants and/or conditions contained in the Agreement will be assumed solely and completely by the assignee. The notice provided pursuant to this paragraph is subject to the reasonable approval of Frisco;

(c) Owner will file any approved, executed assignments in the Land Records of Collin County, Texas; and

(d) Owner shall provide Frisco with the name, address, phone number, fax number and the name of a contact person for the assignee.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective officers, directors, partners, employees, representatives, agents, vendors, grantees, and/or trustees, heirs, executors, administrators, legal representatives, successors and assigns, as authorized herein.

25. **Indemnification.** The parties agree that the Indemnity provisions set forth in Paragraph 10 herein are conspicuous, and the parties have read and understood the same.

26. **Construction.** All construction described herein shall be subject to and in compliance with all ordinances of City, whether now or existing, hereafter amended or in the

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future arising. Evidence of any bonds required by Section 212.073 of the Texas Local Government Code, or other applicable law, shall be provided by Owner to City.

27. **Conveyances.** All conveyances required herein shall be made in a form acceptable to City and free and clear of any and all encumbrances.

28. **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

29. **References to Owner.** When referring to "Owner" herein, this Agreement shall refer to and be binding upon Owner, and its officers, directors, partners, employees, representatives, contractors, agents, successors, assignees, vendors, grantees and/or trustees.

30. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

CITY:

CITY OF FRISCO, TEXAS

By: George Purefoy
George Purefoy, City Manager

OWNERS:

BALJEET K. JAWANDA AND DALJIT S. HUNDLE

By: Baljeet K. Jawanda
Baljeet K. Jawanda, Individually
By: Daljit S. Hundle
Daljit S. Hundle, Individually

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