



Control Number: 47897



Item Number: 100

Addendum StartPage: 0

SOAH DOCKET NO. 473-18-3008.WS
DOCKET NO. 47897

APPLICATION OF FOREST GLEN §
UTILITY COMPANY TO CHANGE § PUBLIC UTILITY COMMISSION
RATES § OF TEXAS

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BEFORE THE

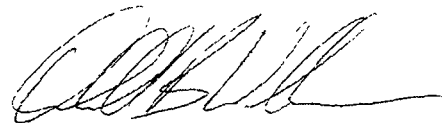
**FOREST GLEN UTILITY COMPANY'S RESPONSE TO COMMISSION STAFF'S
FIRST REQUEST FOR INFORMATION**

TO THE PUBLIC UTILITY COMMISSION STAFF, by and through their attorney of record Richard Nemer, Legal Division, Public Utility Commission of Texas, PO Box 13326, Austin, Texas 78711-3326.

COMES NOW, Forest Glen Utility Company ("Applicant" or "FGUC") and submits this Response to the Public Utility Commission Staff's ("Commission Staff") First Request for Information pursuant to Tex. R. Civ. P. 190 through 198 and 16 Tex. Admin. Code § 22.144 ("TAC"). Pursuant to 16 TAC § 22.144(c)(2)(F), these responses may be treated as if they were filed under oath.

Respectfully submitted,

Randall B. Wilburn
State Bar No. 24033342
Helen S. Gilbert
State Bar No. 00786263
GILBERT WILBURN PLLC
7000 N. MoPac Expwy, Suite 200
Austin, Texas 78731
Telephone: (512) 535-1661
Telecopier: (512) 535-1678



By:

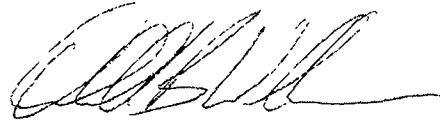
Randall B. Wilburn

**ATTORNEYS FOR FOREST GLEN
UTILITY COMPANY**

100

CERTIFICATE OF SERVICE

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 16th of April 2018.

A handwritten signature in black ink, appearing to read 'RWilburn', written over a horizontal line.

Randall B. Wilburn

**ANSWERS TO COMMISSION STAFF'S FIRST REQUEST FOR
INFORMATION TO FOREST GLEN UTILITY COMPANY**

QUESTION NOS. STAFF 2-1 THROUGH 2-28

Staff 1-1: Please provide electronic Microsoft Excel format copies of Forest Glen's financial statements, including balance sheet and income statement, for years ending:

- a. December 31, 2016; and
- b. December 31, 2017.

RESPONSE: Copies of FGUC'S 2016 and 2017 financial statements are provided as Attachment 1-1; electronic copies will be provided contemporaneously on CD.

Staff 1-2: Please provide electronic Microsoft Excel format copies of Forest Glen's general ledger for the years ending:

- a. December 31, 2016; and
- b. December 31, 2017.

RESPONSE: Copies of FGUC'S 2016 and 2017 general ledger will be provided as Attachment 1-2 as a supplement to these answers.

Staff 1-3: Please reconcile the account balances in Forest Glen's general ledger for year ending December 31, 2016 (as produced in earlier RFI, Staff 1-2), to the following:

- a. Schedule I-1 found in Forest Glen's revised application, filed on February 23, 2018 as Item No. 92 in Docket No. 47897 (Application); and
- b. Account balances in Forest Glen's financial statements for year ending December 31, 2016 (as produced in earlier RFI, Staff 1-1).

RESPONSE:

- a. **The amounts shown on the revised Application are the submitted amounts. Earlier filings included an error that was subsequently discovered during the preparation of these responses.**

- b. **The listing of the Chart of Accounts on the Annual Report and in Schedule I-1 are inconsistent. For instance, on I-1, chemicals are included in Other Volume Related Expenses and in the Annual Report they are a single item. In FGUC's Annual Report, chemicals are included in Acct. 620 Operating Maintenance and Supplies. If Acct. 620 on I-1 is added with**

Acct. 618, the sum equals the amount reported for Acct. 620 on the Annual Report of \$33,078. The discrepancies follow for Schedule I-1 Line 7, which combines Accts. 631-636 yet on the Annual Report 635, Testing Expense stands alone.

Depreciation on the Annual Report, Acct. 403 of \$168,804 is Tax Depreciation. Depreciation on Schedule I-1 of \$68,679 is Book Depreciation. Finally, Schedule I-1, line 29 only includes revenues from Rates, not Other Revenues. The Annual Report and Income Statement (P&L) from the General Ledger includes all Revenues.

Staff 1-4: Please reconcile the account balances in Forest Glen's general ledger for year ending December 31, 2017 (as produced in earlier RFI, Staff 1-2) to the account balances in Forest Glen's financial statements for year ending December 31, 2017 (as produced in earlier RFI, Staff 1-1).

RESPONSE: See Response 1-3 above.

Staff 1-5: Please identify the location where each account balance in Forest Glen's general ledger for year ending December 31, 2017 (as produced in earlier RFI, Staff 1-2), is reported in Schedule I-1 of the Application.

RESPONSE: See Response 1-3 above.

Staff 1-6: Please provide copies of federal income tax returns filed with the Internal Revenue Service (IRS) reflecting Forest Glen's financial transactions for years ending:

- a. December 31, 2015;
- b. December 31, 2016; and
- c. December 31, 2017.

RESPONSE: FGUC's tax returns will be produced as Confidential Documents pursuant to 16 TAC § 22.71(d).

Staff 1-7: Please provide a copy of Forest Glens' IRS Form 1099 – Miscellaneous for years ending:

- a. December 31, 2016; and
- b. December 31, 2017.

RESPONSE: FGUC's Forms 1099 will be produced as Confidential Documents pursuant to 16 TAC § 22.71(d).

Staff 1-8: Please identify the number of metered active connections as of March 1, 2018.

RESPONSE: As of March 1, 2018, there were 223 metered active connections.

Staff 1-9: Please identify the number of metered active connections as of December 31, 2017.

RESPONSE: As of December 31, 2017, there were 219 metered active connections.

Staff 1-10: Regarding the regulatory assessment fee (RAF) paid to the Texas Commission on Environmental Quality (TCEQ), please respond to the following:

a. Identify the total amount of RAF paid to the TCEQ for the years ending:

1. December 31, 2016; and
2. December 31, 2017.

b. If applicable, identify the account where the RAF fee amount is included within the following documents:

1. Forest Glen's financial statements (as provided in earlier Staff RFI 1-1); and
2. Forest Glen's general ledgers (as provided in earlier Staff RFI 1-2).

RESPONSE: a. RAF paid to TCEQ for 2016 was \$1,109. The RAF paid to TCEQ for 2017 was \$1781.71 as shown on Line 20, Acct 409.0 on FGUC's Annual Report filings for 2016 and 2017.

b. The RAF fee amounts are included in Attachment 1-1 under Total Regulatory Expenses.

Staff 1-11: Reference the Application, Schedule I-1, Revenue Requirement Summary. Please provide all contract and/or agreements supporting the administrative and general expense amounts claimed in the Application, Schedule I-1, lines 1-23.

RESPONSE: Copies of FGUC'S contracts supporting administrative and general expenses are provided as Attachment 1-11.

Staff 1-12: Please provide the following information and/or documents with regard to Forest Glen's property taxes:

a. Invoices from taxing entities for years ending:

1. December 31, 2016; and

2. December 31, 2017.
- b. Receipts for property taxes paid for years ending:
 1. December 31, 2016; and
 2. December 31, 2017.
- c. Identify the property tax expense claimed in the Application for years ending:
 1. December 31, 2016; and
 2. December 31, 2017.

RESPONSE: Copies of FGUC'S property tax documentation are provided as Attachment 1-12. Property tax expense claimed in the Application is set forth on Schedule IV-a, line 7.

Staff 1-13: Please provide the following information and/or documents with regard to Forest Glen's tap fees:

- a. Location where tap fees are reported within the Application;
- b. Referencing Application at Schedule III-3, Utility Plant in Service, identify the amount of tap costs and the line number on which the tap costs are reported; and
- c. Differentiate between the services provided by Forest Glen for a tap fee payment and the services provided by Forest Glen for a per lot connection fee (per lot) payment upon closing.

RESPONSE:

- a. **Tap fees are reported on Schedule II-3 as \$13,500. They are not reported as CIAC as they are declared as Income and include in the Tax Return.**
- b. **The Tap Fee related costs on Schedule III-3 are included in the overall costs for Infrastructure in Line items 2-8.**
- c. **As described on the Notes in FGUC's Application Schedules I-2 and II-3, the Tap Fees and Connection Fees are charged to builders and claimed as regular income, not CIAC. The fees are used for capital related costs and operating cost structural deficits that exist until the number of customers and new rates reach the level needed to support operations through rates alone.**

Staff 1-14: Reference Application, Schedule II-3, Other Revenues & Expenses Passed Through. Please provide the following information and/or documentation:

- a. The agreement between Forest Glen and the builder/developer for the \$2,950/per lot connection fee (connection fee) charged at closing and identified on line 7.
- b. A copy of the generally accepted accounting principal or regulatory document that allows Forest Glen to account for connection fees as depicted in Schedule II-3.
- c. A detailed explanation of each cost paid for by the connection fee including, but not limited to, the following:
 1. The account number associated with each cost;
 2. An account description for each cost; and
 3. The amount attributed to each cost.

RESPONSE:

- a. **A copy of the FGUC/developer agreement is provided as Attachment 1-14.**
- b. **According to Chapter F-1909.1 of the Federal Tax Coordinator 2d (also attached as Attachment 1-14), "a CIAC does not include amounts paid as a service charge for starting or stopping service. Such a charge is a customer connection fee and a customer connection fee is not a CIAC and generally is includible in income. The term "customer connection fee" also includes any amount of money or other property transferred to the utility representing the cost of installing a connection or service line (including the cost of meters and piping) from the utility's main water or sewer lines to the line owned by the customer or potential customer."**
- c. **As described on the Notes in FGUC's Application Schedule I-1 and II-3, and in answers to RFI 1-13 above, the Tap Fees and Connection Fees are charged to builders and claimed as regular income, not CIAC. The fees are used for capital related costs and operating cost structural deficits that exist until the number of customers and new rates reach the level needed to support operations through rates alone. There is not a detailed cost item associated with each individual Tap or Connection Fee.**

Staff 1-15: Reference Application, Schedule III-3, Utility Plant in Service (Net Book Value) Calculation. Please provide the following information and/or documentation:

- a. Specify the amount of the \$2,950/per lot connection fee that should be allocated to each line in Schedule III-3.
- b. Detailed explanation of the specific assets that were paid for by each developer or customer contribution, including, but not limited to, the following information:
 1. The asset name;
 2. The general ledger account number; and
 3. The line number on the depreciation schedule.

RESPONSE:

- a. **Schedule III-3 is a depreciation table. As described on the Notes in FGUC's Application, Schedule I-2 and II-3, and in answers to RFI 1-13 and 1-14 above, the Tap Fees and Connection Fees are charged to builders and credited as regular income in the year received, therefore, this revenue is not CIAC. The fees are used for capital related costs and operating cost structural deficits that exist until the number of customers and new rates are sufficient to support operations. Accounting as income reduces the amount of revenue from customers necessary to meet the operating costs. There is not a detailed cost item associated with each individual Tap or Connection Fee as there might be if they were CIAC. When costs are incurred, they are booked into the appropriate expense accounts, there is not a corresponding entry made into the revenue account to correlate where the funds were specifically spent.**
- b. **A copy of the developer contributions is provided as Attachment 1-15.**

Staff 1-16: Reference the Application, Schedule III-8, Advances for Construction and Contributions in Aid of Construction. Please provide an explanation of the developer contribution in aid of construction cost of \$1,356,794. Include in the explanation the following:

- a. A description of each individual developer contribution;
- b. The specific amount allocated to each individual developer contribution; and
- c. The date of each individual developer contribution.

RESPONSE:

- a. **The developer pays for and constructs the sewer lines in the ground. When the work is completed, the sewer lines are conveyed to FGUC. Schedule III-3, lines 2-8 reflect the costs**

associated with each discreet portion of the work (i.e., unit 2, unit 3, etc.).

b. **See Attachment 1-15 (relating to developer contributions).**

c. **See Application, Schedule III-3 – it is the same as the date placed in service.**

Staff 1-17: Please provide closing documents for all lot purchases in the Forest Glen subdivision.

RESPONSE: FGUC has no closing documents.

Staff 1-18: Reference the Application, Schedule I-1, Revenue Requirement Summary. Please provide an explanation and/or documentation demonstrating that the salaries, contract labor, and professional services requested in the Application are reasonable and necessary for providing sewer service.

Include in the response the specific duties and responsibilities of each employee or contract laborer reported to have provided services (as identified in Forest Glen's general ledger for year ending December 31, 2016 or December 31, 2017) in the following areas: legal, accounting, management services, maintenance services.

RESPONSE: Copies of salary/contract labor/professional service documentation and corresponding explanation of duties are provided as Attachment 1-18.

Staff 1-19: Reference the Application, Schedule I-1, Revenue Requirement Summary. Please provide a supporting schedule, including detailed calculations, explaining how the known and measurable depreciation expense amount (\$6,740) was calculated.

RESPONSE: The \$6,740 amount was calculated based on the estimated cost of the next plant expansion based on the last expansion. The costs for this have a high likelihood of being within 10% of actual costs as FGUC has recently added to the WWTP and this expansion is substantially similar. Depreciation was calculated at 2.5% of the total expected new cost, as shown on Attachment 1-19 attached.

ATT 1-1
2016-2017 P&Ls AND BALANCE SHEET
1. Balance Sheet

Name of Utility: Forest Glen Utility Company

Line #		End of Year 12/31/2017	End of Prior Year 12/31/2016
	<u>ASSETS</u>		
	<u>UTILITY PLANT</u>		
1	101 Utility Plant in Service	\$ 3,174,394	\$ 1,987,931
2	TOTAL UTILITY PLANT	\$ 3,174,394	\$ 1,987,931
3	108 Less: Accumulated Amortization		
4	110 Less: Accumulated Depreciation	\$ (471,140)	\$ (364,830)
5	NET UTILITY PLANT	\$ 2,703,254	\$ 1,623,101
6	<u>CURRENT ASSETS</u>		
7	131-135 Cash	\$ 30,059	\$ 67,326
8	141-143 Accounts Receivable	\$ -	\$ -
9	151 Plant Materials and Supplies (not previously expensed)	\$ -	\$ -
10	171-174 Other Current Assets	\$ -	\$ -
11	TOTAL CURRENT ASSETS	\$ 30,059	\$ 67,326
12	<u>TOTAL ASSETS*</u>	\$ 2,733,313	\$ 1,690,427
	<u>LIABILITIES & EQUITY</u>		
	<u>EQUITY</u>		
13	201 Common Stock	\$ 500	\$ 500
14	211 Other paid in capital	\$ 866,295	\$ 866,295
15	215 Retained Earnings	\$ (235,864)	\$ (227,969)
16	218 Proprietary Capital	\$ -	\$ -
17	TOTAL STOCKHOLDERS' EQUITY	\$ 630,931	\$ 638,826
	<u>LONG-TERM DEBT</u>		
18	224 Long-term debt (more than 1 year)	\$ -	\$ -
	<u>CURRENT LIABILITIES (less than 1 year)</u>		
19	231 Accounts Payable	\$ 1,297	\$ -
20	232 Notes Payable	\$ 150,000	\$ -
21	241.0 Other Current Liabilities	\$ -	\$ -
	TOTAL CURRENT LIABILITIES	\$ 151,297	\$ -
	<u>OTHER LIABILITIES and DEFERRED CREDITS</u>		
22	253 Other Deferred Credits	\$ -	\$ -
23	271-272 Net Contributions in Aid of Construction	\$ 1,951,085	\$ 1,051,601
24	TOTAL OTHER LIABILITIES and DEFERRED CREDITS	\$ 1,951,085	\$ 1,051,601
25	<u>TOTAL LIABILITIES & EQUITY*</u>	\$ 2,733,313	\$ 1,690,427

ATT 1-1
2016-2017 P&Ls AND BALANCE SHEET
2. Statements of Income

Name of Utility: Forest Glen Utility Company

Line #	Report Calendar Year	2016	Water	Sewer	Total
			Report Year	Report Year	Report Year
			none	2016	2016
			A	B	C=A+B
1	Total Revenue:		none	\$ 261,371	\$ 261,371
	Operating Expenses:				
2	601 O & M Salaried Labor		none		
3	604 Employee Benefits		none		
4	631, 635, 636 O & M Contract labor		none	\$ 31,000	\$ 31,000
5	620 Operating/Maint Supplies		none	\$ 33,078	\$ 33,078
6	610 Purchased Water		none		
7	615 Purchased Power		none	\$ 10,704	\$ 10,704
8	635 Testing Expense		none	\$ 12,008	\$ 12,008
9	618 Chemicals		none		
10	656-659 Insurance		none	\$ 2,466	\$ 2,466
11	601 General Office Salaries		none		\$ -
12	675 General Office Expenses		none	\$ 2,590	\$ 2,590
13	632 Contract Accounting		none	\$ 6,748	\$ 6,748
14	633 Legal		none	\$ 8,403	\$ 8,403
15	634 Management		none	\$ 6,976	\$ 6,976
16	666 Amortization- Rate Case Expense		none		\$ -
17	403 Depreciation Expense		none	\$ 168,804	\$ 168,804
18	667-675 Other Misc. Expenses		none	\$ 1,544	\$ 1,544
	Taxes:				
19	409 Federal Income Taxes		none		
20	409.0 State Franchise Taxes/Reg Assess.		none	\$ 1,109	\$ 1,109
21	408 All Other Taxes		none	\$ 12	\$ 12
22	Total Expenses		none	\$ 285,442	\$ 285,442
23	Net Operating Income		none	\$ (24,071)	\$ (24,071)
24	421, 433 Non-Operating Income		none		
	Non-Operating Deductions:				
25	426 Other		none		
26	427 Interest		none	\$ 2,879	\$ 2,879
27	Net Income		none	\$ (26,950)	\$ (26,950)

ATT 1-1
2016-2017 P&Ls AND BALANCE SHEET
2. Statements of Income

Name of Utility: Forest Glen Utility Company

Line #	Report Calendar Year	2017	Water	Sewer	Total
			Report Year	Report Year	Report Year
			none	2017	2017
			A	B	C=A+B
1	Total Revenue:		none	\$ 239,710	\$ 239,710
	Operating Expenses:				
2	601 O & M Salaried Labor		none		
3	604 Employee Benefits		none		
4	631, 635, 636 O & M Contract labor		none	\$ 36,050	\$ 36,050
5	620 Operating/Maint Supplies (Includes Rep		none	\$ 26,401	\$ 26,401
6	610 Purchased Water		none	\$ -	\$ -
7	615 Purchased Power		none	\$ 17,691	\$ 17,691
8	635 Testing Expense		none	\$ 10,010	\$ 10,010
9	618 Chemicals		none		\$ -
10	656-659 Insurance		none	\$ 2,679	\$ 2,679
11	601 General Office Salaries		none		\$ -
12	675 General Office Expenses incl. IT		none	\$ 701	\$ 701
13	632 Contract Accounting		none	\$ 7,717	\$ 7,717
14	633 Legal		none	\$ 21,804	\$ 21,804
15	634 Management (Includes Engineering)		none	\$ 10,656	\$ 10,656
16	666 Amortization- Rate Case Expense		none		\$ -
17	403 Depreciation Expense		none	\$ 106,310	\$ 106,310
18	667-675 Other Misc. Expenses		none	\$ 288	\$ 288
	Taxes:				\$ -
19	409 Federal Income Taxes		none		\$ -
20	409.0 State Franch Taxes/Reg Assess. (TCE		none	\$ 1,782	\$ 1,782
21	408 All Other Taxes		none	\$ -	\$ -
22	Total Expenses		none	\$ 242,089	\$ 242,089
23	Net Operating Income		none	\$ (2,379)	\$ (2,379)
24	421, 433 Non-Operating Income		none	\$ 790	\$ 790
	Non-Operating Deductions:				
25	426 Other		none		
26	427 Interest		none	\$ 2,795	\$ 2,795
27	Net Income		none	\$ (4,384)	\$ (4,384)

PRIME CONTRACT AGREEMENT

This Prime Contract Agreement ("Agreement") is made by and between **Forest Glen Utility Co.** ("Owner"), whose address for the purpose of this Agreement is 15720 Bandera Rd, Suite #1, Helotes, Texas 78023, and Jason Smith ("Contractor"), whose address for the purpose of this Agreement is 903 Flying L Drive, Bandera, Texas, 78003, for the completion of the Work set forth herein in strict accordance with the Contract Documents on the construction project located at 409 Barden Parkway, Castroville, Texas 78009 (the "Project"). In consideration of the mutual covenants herein contained, the receipt and sufficiency of which is hereby expressly acknowledged, the Owner and Contractor agree as follows.

CONTRACT DOCUMENTS: The Contract Documents consist of this Agreement, its Exhibit (specifically, **Exhibit A**, entitled "Scope of Work", as well as any written amendments to any Contract Documents executed by Owner and Contractor in accordance with the terms of this Agreement. All Contract Documents shall be considered complimentary to one another and are incorporated herein by reference for all purposes. To the extent of any conflict between the terms of this Agreement and any other Contract Document, the provisions containing the greater scope of work shall govern. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, whether written or oral. The Contract Documents may not be modified in any way except in writing, signed by an authorized representative of Owner and Contractor in strict accordance with the terms of this Agreement.

Contractor acknowledges that the Contract Documents are available for inspection and review by the Contractor at Owner's office, and represents and warrants to Owner that Contractor has carefully reviewed all of the Contract Documents and inspected the Project site, that it is unaware of any ambiguities, conflicts or discrepancies in the Contract Documents, and that the materials, methods and apparatus specified for the Work are sufficient and suitable to secure the results contemplated by the Contract Documents. Any and all ambiguities, conflicts and/or discrepancies, or potential ambiguities, conflicts and/or discrepancies, in the Contract Documents that render the Contract Documents unsuitable or inadequate to accomplish the Owner's desired results shall be reported immediately to Owner in writing. Contractor agrees that its failure to bring any such ambiguity, conflict and/or discrepancy to the attention of Owner in writing as set forth herein before its performance of such Work shall constitute a waiver of any claims Contractor has or might otherwise have had as a consequence of any such ambiguities, conflicts and/or discrepancies. Contractor represents and warrants to Owner that it fully understands the scope of the undertaking under this Agreement and that it can and will timely and properly perform all of its responsibilities and obligations in strict accordance with the Contract Documents.

Owner shall not be required to provide professional services of any kind or nature that constitute the practice of architecture or engineering. Owner shall not be liable to Contractor or any other entity for any damages resulting from any errors, inconsistencies or omissions in the Contract Documents.

SCOPE OF WORK: Except as may be expressly provided elsewhere in this Agreement, Contractor shall provide and pay for all labor, supervision, materials, tools, equipment, mobilization, demobilization and related services as described in and/or reasonably inferable from **Exhibit A** entitled "Scope of Work" which is attached hereto and incorporated herein ("Work"), free from all claims of material men, suppliers, laborers and subcontractors of any tier. Contractor shall include everything requisite and necessary to timely and properly complete the entire Work, notwithstanding that every item necessarily involved may not be specifically mentioned. Contractor shall use the utmost skill and attention to timely and properly complete the Work in a first-class and quality manner in strict accordance with the Contract Documents. Contractor shall not be relieved of any obligations or responsibilities with respect to the Work except by Owner's express written consent.

CONSIDERATION: In return for Contractor's timely and proper performance of the Work in the manner required by the Contract Documents, and subject to the other terms and conditions of the Contract Documents, Owner shall pay to Contractor, and Contractor shall accept as full compensation therefore, the total sum of **Five Thousand and 00/100 Dollars (\$5,000.00)** per month payable on the 1st of the month during the duration of this contract (the "Contract Price"), subject to additions and deductions for changes in the Work made in accordance with the terms of the Contract Documents. Unless otherwise specified, the Contract Price shall include all taxes, insurance premiums, charges for permits and all other fees and charges necessary or

**ATTACHMENT 1-11
G&A CONTRACTS**

desirable for the completion of the Work. The Contract Price shall be firm and binding upon Contractor, and is not subject to modification for any labor cost increases, material escalation costs and/or other unanticipated costs or expenses, which might occur during the course of working at Forest Glen Utility

CONTRACT TIME: Contractor shall at all times diligently and continuously prosecute the Work in accordance with the Contract Documents. Contract will begin on October 8, 2016, unless otherwise mutually agreed upon to begin earlier and end on:

31st day of October, 2018

The period selected above shall constitute the "Contract Time" for this Agreement. Contractor acknowledges and agrees that time is of the essence in the performance of Contractor's duties under this Agreement. This is an at will contract and therefore may be terminated by the Owner at any time with 30 days notice to the Contractor without any penalty.

MISCELLANEOUS: All law matters relating to the validity, performance or interpretation of this Agreement shall be governed by the laws of the State of Texas. For purposes of enforcement of this Agreement, Owner and Contractor acknowledge and agree that Bexar County, Texas shall be the place of performance of this Agreement, and all disputes concerning and/or arising out of this Agreement shall be resolved in Bexar County, Texas. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (a) mailed by registered or certified mail with return receipt requested or (b) by telefacsimile (with telefacsimile confirmation of receipt) to the addressee. Notice so mailed shall be deemed effective the earlier of actual receipt or three (3) business days following its deposit with the United States Postal Service or any successor thereto.

By executing this Agreement, Owner and Contractor acknowledge and agree that the General Conditions set forth in **Exhibit A** hereto shall govern this and any and all future transactions between the parties unless otherwise expressly agreed in writing and signed by both parties.

Subject to other provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the permitted successors, assigns, heirs and/or personal representatives of the parties hereto.

IN WITNESS THEREOF, the parties hereto have executed this Agreement to be effective as of the ____ day of _____, 20____ ("Effective Date").

Owner:
Forest Glen Utility Co.

By: 

Name: Harry Hansen

Its: Manager

Contractor:

By: 

Name: Jason Smith

Its: Waste Water Operator

Exhibit A: Scope of Work

**ATTACHMENT 1-11
G&A CONTRACTS**

**EXHIBIT A
SCOPE OF WORK**

General Services to be performed for the operation and maintenance of the wastewater treatment facility. (at time of this contract 2 total MBBR plants are included in the treatment facility)

1. In compliance with Agency (TCEQ) and manufacturer's requirements, inspect and perform routine maintenance on the Wastewater Treat Facility (Permit #WQ001503001) five days per week.
2. Inspections will be noted on a daily operations work sheet and included with monthly billing.
3. Cause all reports as required by TCEQ to be submitted in a timely manner.
4. Furnish all hand tools not required to remain on the premises of the owner.
5. Provide 24-Hour standby service with notification procedure for after hours, weekends and holidays.
6. Insure proper operation of the Wastewater Treatment Facility, Contractor will inspect the plant a minimum of two days per week.

Services to be performed during each inspection.

1. Take DO reading and note same on operation report.
2. Take flow reading and note same on operation report.
3. Check all motors and controls to insure proper operation.
4. Clean disc filter of any deleterious material and dispose of said material at a location as designated by Owner.
5. Retrieve samples as required and deliver to lab for analysis twice weekly (cost of analysis to be borne by Owner).
6. Take chlorine readings and note same on operation report. Also, fill chlorine tanks as needed.
7. Advise Owner of any irregularities, potential maintenance or operational issues, or other potential within 24 hours of discovering same (unless faster notification is appropriate due to an emergency condition).
8. Clean filter basket at lift station to prevent clogging of lift station sump pumps. Unclog and reinstall sump pumps as needed.
9. Recognize other duties as required to maintain the plant and ensure it is in compliance with all permit requirements.
10. Operator will also be responsible for routine inspections of at least once per week of the Forest Glen Collection system and notify the Forest Glen office of any issues that need to be addressed to the collection system. The collection system for Forest Glen involves all of the sewer lines, manholes, and all other sewer appurtenances that feed into the lift station at the Forest Glen Facility.

Additional Cost:

1. Forest Glen Utility will supply all chlorine.
2. Any repairs necessary will be require approval from Forest Glen Utility prior to being completed.
3. Any additional cost over and above the \$5,000.00 will require approval by Forest Glen Utility.

For services rendered by the Contractor, the company shall pay the Contractor as follows:

-The sum of \$5,000.00 per month, payable on approximately the 1st of the month each month of this agreement, until terminated.

ESTIMATE

2 February 2017

Potranco Estates
409 Barden Pkwy
Castroville, Texas 78009

Re: 36,000 gpd Series 3000 MBBR Jet Plant (Phase 2)

**ESTIMATE FOR A JET SERIES 3000 (36,000 GPD) MBBR WASTEWATER TREATMENT
PLANT WITH FLOW EQUALIZATION**

The breakdown includes:

Jet 36,000 gpd MBBR package plant:

- Castings (34 castings)
- 10 lps side hill screen
- Delivery
- Crane to unload tanks
- Basic Equipment Package
- Stand-by Equipment
- Freight charges

Labor to assemble plant on-site

Dig and prepare tank hole (64'x15'x12' deep)

Tank pad in bottom of hole (60'x13'4"x6")

Equalization Tank: (17,500 gal)

- 10 Castings
- Delivery and Setting
- Blower with Motor (on site)
- Excavation and Backfill
- 2 ea ME-4011a effluent pumps
- Wiring and float switches

Aerated Sludge Holding (3,500 gallons)

- Castings 5
- Delivery and Setting
- Excavating and Backfill
- 1 ea. Meyers S25 decanting pump

Duplex PLC based controller

Total Estimate

\$ 300,696.40

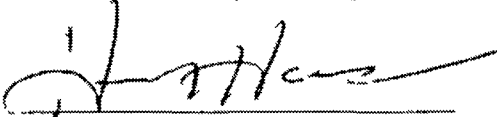
Prices are good for 60 days and may be extended.

An initial draw will be required in the amount of \$ ~~170,900.00~~ 150,000 *Heb*

ACCEPTANCE

Forest Glen Utility Co Corp

SOUTH TEXAS WASTEWATER TREATMENT



Authorized Agent

R. Bruce Cobabe

Dated: 3/6/2017

Dated: _____

*This Cost estimate does not include:

1. Meter Loops or Electrical Supply
2. Collection Lines (sewer pipes to bring wastewater to Plant)
3. Rock removal if required during installation digging tank hole
4. Any haul off of spoilage from tank holes
5. Any additional costs caused by acts of nature
6. County/state Permit Fees
7. Intruder proof fence

1 - YEAR LIMITED WARRANTY

South Texas Wastewater Treatment warrants all new wastewater treatment equipment installed against defective materials and workmanship under normal service, for one year commencing upon date of original installation.

To make a claim under this warranty, you shall notify South Texas Wastewater Treatment at 210 249-8098 or P.O. Box 1284, Boerne, TX 78006.

The warranty does not cover equipment that has been (1) damaged due to disassembly by unqualified persons, improper use or misuse, or lightning, (2) subjected to external damage, (3) damage due to improper or altered wiring or overload protection of, (4) damage by failure to follow the suggestions outlined in the Owner's Manual. The warranty applies only to the equipment furnished by South Texas Wastewater Treatment and does not include any of the external wiring, plumbing, drainage, or any other part of the system not installed by South Texas Wastewater Treatment.

South Texas Wastewater Treatment shall not be held responsible for any damages caused by defective components or materials, or for loss incurred because of interruption of service, or any other special, consequential, or incidental damages or expenses arising from the manufacture, sale, use or misuse of installed equipment. This warranty program is in lieu of all other express warranties, and warranty implied by law, including implied warranties or merchantability or fitness for a particular purpose(if applicable), is in effect only for the one year warranty period specified above.

The Company reserves the right to revise, change or modify the construction and design of other systems and of any component part or parts thereof, without incurring any obligation to make such changes or modifications in present equipment.

This warranty gives you specific legal rights, and you may also have other rights depending on state laws.

ATTACHMENT 1-11
SOUTH TEXAS WASTEWATER TREATMENT

Authorized JET Distributor - Home and Commercial - Engineering Services
P.O. Box 1284 Boerne, Texas 78006 • 830-249-8098 or 1-800-86-WASTE, www.stwastewater.com

ESTIMATE

2 February 2017

Potranco Estates
FM 1957
Castroville, Texas 78009

Re: Side Hill Screen

10 LITER PER SECOND SIDE HILL SCREEN

The breakdown includes:

1 ea. Up to 158 GPM Side Hill Screen

Freight charges

Labor to assemble and install on-site

Total Estimate \$ 17,8148.78

ACCEPTANCE

Forest Glen Utility Co Corp

SOUTH TEXAS WASTEWATER TREATMENT



Authorized Agent

R. Bruce Cobabe

Dated: 3/6/17

Dated: _____

1 - YEAR LIMITED WARRANTY

South Texas Wastewater Treatment warrants all new wastewater treatment equipment installed against defective materials and workmanship under normal service, for one year commencing upon date of original installation.

To make a claim under this warranty, you shall notify South Texas Wastewater Treatment at 210-249-8098 or P.O. Box 1284, Boerne, TX 78006.

The warranty does not cover equipment that has been (1) damaged due to disassembly by unqualified persons, improper use or misuse, or lightning, (2) subjected to external damage, (3) damage due to improper or altered wiring or overload protection of, (4) damage by failure to follow the suggestions outlined in the Owner's Manual. The warranty applies only to the equipment furnished by South Texas Wastewater Treatment and does not include any of the external wiring, plumbing, drainage, or any other part of the system not installed by South Texas Wastewater Treatment.

South Texas Wastewater Treatment shall not be held responsible for any damages caused by defective components or materials, or for loss incurred because of interruption of service, or any other special, consequential, or incidental damages or expenses arising from the manufacture, sale, use or misuse of installed equipment. This warranty program is in lieu of all other express warranties, and warranty implied by law, including implied warranties of merchantability or fitness for a particular purpose (if applicable), is in effect only for the one-year warranty period specified above.

The Company reserves the right to revise, change or modify the construction and design of other systems and of any component part or parts thereof, without incurring any obligation to make such changes or modifications in present equipment.

This warranty gives you specific legal rights, and you may also have other rights depending on state laws.

Forest Glen Utility Contract

This Agreement (hereinafter "Contract") is made this 1st day of January 2015, by and between Forest Glen Utility, (hereinafter "Contractor"), and Hausman Management, LLC.

Contractor and Subcontractor agree as set forth below.

1. Project Name and Location:
Forest Glen Utility
2. The Work: Subcontractor shall maintain the financial documents related to Forest Glen Utility to include but is not limited to purchasing material, paying invoices and managing vendors. Ensuring all necessary State documents are submitted and collected including but not limited to customer service agreements, testing and yearly reports.
3. Contract Time: Subcontractor shall commence the Work on or about 1/1/2017, and shall complete the work until 1/1/2019.
4. Contract Sum: Contractor shall pay Subcontractor the sum of \$1,500.00 per month.
5. Payment: Contractor shall pay Subcontractor for the Work when invoices have been submitted.
6. Contract Documents: The Contract Documents consist of this Contract; the General Conditions attached hereto and incorporated herein:

Forest Glen Utility, LLC
Contractor

By: _____

Name: _____

Title: _____

Hausman Management, LLC
Subcontractor

By: _____

Name: _____

Title: _____

GENERAL CONDITIONS OF CONSTRUCTION CONTRACT

1. **Means and Methods.** Subcontractor shall be solely responsible for and have control over maintainence means, methods, techniques, sequences, hiring and procedures and for coordinating all portions of the Work under the Contractors hired by Sub contractor
2. **Utilities, services, etc.** Subcontractor shall monitor labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper running of the plant.
3. **Materials and Workmanship.** Subcontractor will monitor that materials and equipment furnished under the Contractors hired by companies will be of good quality and new unless otherwise permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.
4. **Ordinances, Laws and Permits.** Subcontractor will ensure all permits and licenses necessary for the prosecution of the Work shall be secured and paid for by companies hired to develop units, unless otherwise specified in writing. Subcontractor shall give all notices, and comply with all laws, ordinances, rules and regulations bearing on the performance of the Work. If Subcontractor observes the specifications or any drawing are at variance therewith, he shall promptly notify Contractor in writing and any necessary changes must be adjusted to the satisfaction of Contractor before proceeding with the Work. If Subcontractor performs any work knowing it to be contrary to any of such laws, ordinances, rules and regulations, and without such notice, he shall bear all costs and damages arising therefrom or in connection therewith.
5. **Clean-up.** Subcontractor shall ensure the Project and surrounding areas are free from accumulation of waste materials or trash caused by operations under the Contract.
6. **Indemnification.** Subcontractor shall indemnify and hold harmless Contractor, Contractor's consultants, officers, directors, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of Subcontractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by any negligent act or omission of Contractor, its consultants, agents or employees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit

acts or other employee benefit acts.

7. **Inspections and Acceptance of Work.** Contractor and its representatives shall at all times have access to the plant. All materials and workmanship shall be subject to inspection and acceptance by Sub Contractor.
8. **Financials.** Sub Contractor and its representatives shall maintain all the paperwork and financials for the Contractor. Subcontractor will maintain all accounts including but not limited to checking.

ATTACHMENT 1-11
G&A CONTRACTS
PRIME CONTRACT AGREEMENT

Contract No. 2018-02-21

This Prime Contract Agreement (the "Agreement") is entered into by and between Forest Glen Utility Co. (as "Owner"), whose address for the purposes of this Agreement, is 15720 Bandera Road, Suite 103, Helotes, Texas 78023, and The Lawn Whisperer, a Texas Sole owner with its principal place of business located at 636 CC 4614 Castroville, Texas 76009, (as "Contractor") for the full, proper and timely completion of the Work set forth in the "Scope of Work" attached hereto as **Exhibit A** on the Regular Lawn Maintenance construction project located at Forest Glen Treatment Facility, 409 Barden Parkway, Castroville, Texas 78009 (the "Project"). In consideration of the mutual agreements and obligations set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged by both parties, the Owner and Contractor agree as follows.

CONTRACT DOCUMENTS: The Contract Documents governing Contractor's Work on the Project consist of this Agreement, **Exhibit A** entitled "Scope of Work", all architectural and engineered plans approved by Owner, and the Project's Specifications applicable to the Work (the "Contract Documents"), as well as any written amendments to any Contract Documents executed by the parties hereto in accordance with the terms of this Agreement. All Contract Documents shall be considered complimentary to one another and are incorporated herein by reference. To the extent of any conflict between the terms of this Agreement and any other Contract Document, the provisions ensuring the most complete, integrated, fully functioning and properly constructed Project shall govern. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, whether written or oral. The Contract Documents may not be modified in any way except in writing, signed by an authorized representative of Owner and Contractor.

Contractor shall have the sole responsibility to satisfy itself concerning the nature, location and extent of the Work, the Project Site and the general, local and unforeseen conditions. Contractor further acknowledges and agrees that Owner shall not be required to provide professional services of any kind or nature that constitute the practice of architecture or engineering, and that Owner shall not be liable to Contractor or any other entity for any damages resulting from any errors, inconsistencies or omissions in the Contract Documents. Contractor represents to Owner that Contractor has carefully reviewed all of the Contract Documents and the Project site, that it is unaware of any ambiguities, conflicts or discrepancies in the Contract Documents, that the materials, methods and apparatus specified for the Work are sufficient and suitable to ensure a complete, integrated, fully functioning and properly constructed Project, that the results contemplated by the Contract Documents, and that Contractor can and will perform the Work free from of any defect, deficiency or liability to Owner. Any ambiguities, conflicts and/or discrepancies in the Contract Documents that render the Contract Documents unsuitable or inadequate to accomplish the Owner's desired results for the Project shall be reported immediately to Owner in writing. Contractor agrees that its failure to bring any such ambiguity, conflict and/or discrepancy to the attention of Owner in writing as set forth herein before its performance of such Work shall constitute a waiver of any claims Contractor has or might otherwise have had as a consequence of any such ambiguities, conflicts and/or discrepancies.

SCOPE OF WORK: Contractor will provide all labor, materials, tools, equipment, supervision and related services set forth within and/or contemplated by **Exhibit A** (the "Work"), and utilize its utmost skill and attention, to timely and properly complete the Work in a first-class and workmanlike manner, utilizing that high degree of skill, attention and care customarily exercised by first-quality contractors performing similar services on commercial development projects of a similar nature and scope within the State of Texas, free from all claims of materialmen, suppliers, laborers, and subcontractors of any tier. Contractor shall include everything necessary and/or desirable to timely and properly complete the entire Work, notwithstanding that every item necessarily involved may not be specifically mentioned. Contractor shall not be relieved of any obligations or responsibilities with respect to the Work except by Owner's express written consent. Contractor shall secure and pay for all building and other permits or authorizations required to carry out the Work, as well as all other governmental fees, licenses and inspections necessary for the performance thereof. Contractor shall also give all notices relating to the Work that are required by law. All Work, labor, services and materials to be furnished by or on behalf of Contractor shall strictly comply with all applicable federal, state and local laws, rules, codes, regulations, statutes, ordinances and directives related to the Contractor or the Work (individually and collectively, "Laws").

INSPECTING ENGINEER: The Inspecting Engineer on the Project is Harry Hausman, Michael Ingersoll, or Jason Smith whose address for purposes of this Agreement is 15720 Bandera Rd. Ste #103 Helotes, Texas 78023.

CONTRACT PRICE: In return for Contractor's timely and proper completion of the Work in the manner required by the Contract Documents, and subject to the other terms and conditions of this Agreement, Owner shall pay to Contractor, and Contractor shall accept as full compensation therefore, the fixed total sum of \$2,000.00 (the "Contract Price"), subject to additions and deductions for changes in the Work made only in strict accordance with the terms of this Agreement. Unless otherwise expressly stated in the Contract Documents, the Contract Price shall include all taxes, insurance premiums, shipping and other transportation charges, licenses, charges for permits and all other fees and charges necessary or desirable for the completion of the Work. The Contract Price shall be firm and binding upon Contractor, and is not subject to modification for any labor cost increases, material escalation costs and/or other unanticipated costs or expenses which might occur during the course of performance of the Work.

All payments shall be subject to Owner's withholding of ten percent (10%) statutory retainage until not earlier than the thirtieth (30th) day following final completion of Contractor's Work.

To the extent that the Price is based upon units of work or materials, the Contract Price is determined as follows:

\$200.00 per mow at 10 per year Total (includes labor, materials, and equipment)

**ATTACHMENT 1-11
G&A CONTRACTS**

CONTRACT TIME: Contractor shall at all times diligently, continuously and with all possible speed prosecute the Work in accordance with the terms of this Agreement, and consistent with approved construction practices, so as to achieve Final Completion of the Work on or before:

☐ _____ calendar days from the effective date of this Agreement; or

☐ the 1st day of February, 2018.

The period selected above shall constitute the "Contract Time" for this Agreement. **Contractor acknowledges and agrees that time is of the utmost essence in the performance of Contractor's duties under this Agreement.**

If Contractor is not timely or diligently performing any of its Work such that Contractor, in the prudent judgment of Owner, is at risk of not achieving final completion of its Work within the Contract Time, then, in addition to its other rights and remedies, Owner may require Contractor to work overtime, supplement its workforce, shift Work, add additional equipment or materials, or otherwise accelerate its performance, if deemed necessary, in the reasonable judgment of Owner, to maintain the diligent progress of the Work. Any such efforts required to comply with Owner's direction, maintain progress and/or complete the Work within the Contract Time shall be at Contractor's expense unless otherwise specifically stated in writing by Owner prior to the commencement of such efforts. Owner shall not be liable to Contractor in any manner for any delay from causes beyond Owner's sole and exclusive control. If Owner is solely and exclusively the cause of any delays in the Work, Owner's total liability for same shall be limited to granting the Contractor justifiable time extensions on written application therefore given to Owner within five (5) days of the commencement of each instance of Owner's delay.

MISCELLANEOUS: All law matters relating to the validity, performance or interpretation of this Agreement shall be governed by the laws of the State of Texas. For purposes of enforcement of this Agreement, Owner and Contractor acknowledge and agree that Bexar County, Texas shall be the place of performance of this Agreement, and all disputes concerning and/or arising out of this Agreement shall be resolved in Bexar County, Texas. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if (a) mailed by registered or certified mail with return receipt requested or (b) by telefacsimile (with telefacsimile confirmation of receipt) to the addressee. Notice so mailed shall be deemed effective the earlier of actual receipt or three (3) business days following its deposit with the United States Postal Service or any successor thereto.

By executing this Agreement, Owner and Contractor acknowledge and agree that the General Conditions set forth in **Exhibit B** hereto shall govern this and any and all future transactions between the parties unless otherwise expressly agreed in writing and signed by both parties. Subject to other provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the permitted successors, assigns, heirs and/or personal representatives of the parties hereto.

DATED to be effective this 1 day of February, 2018.

OWNER:

CONTRACTOR:

Signature: _____

Name: Michael Ingersoll

By: Project Manager

Signature: _____

Name: Ron S. ...

Title: Owner

Exhibit A: Scope of Work

ATTACHMENT 1-11
G&A CONTRACTS
EXHIBIT A
SCOPE OF WORK

____ Contractor is to perform the following:

>Overview-Contract Start Date-__1 February 2018__ Contract Completion Date-__1 February 2019__

Contractor will provide Lawn maintenance services for a calendar year for the Forest Glen Treatment Facility located at the Potranco Ranch Subdivision.

>Contractor is aware that all trash and debris related to this project needs to be disposed of properly at each service day and removed completely from the job site.

>If any issues or questions arise in regard to this job, contractor will contact owner/ owner's office so that any necessary decisions can be rendered.

>Contractor will provide owner's office the Company Name, Name of Contact person, contact phone number, and contact email address for any outside company that Contractor hires for services related to this project. Such as roll away dumpster company, sub contracted electrician, etc .

>Contractor will make every effort to hold to a regular mowing schedule, such as mowing this property the first Monday of each month, in order to keep the same approximate number of days between lawn maintenance. And contractor will provide the Owner with a tentative mowing schedule/ calendar.

>If the Contractor feels that additional additional services such as an extra mow or applying weed killer or fertilizer is needed, contractor will contact the owner via email with the price for additional services and must get an answer in writing approving the charges before initiating requested additional service

>Contractor has stated that he will maintain the trees on the property at no additional cost up to 6 feet off the ground.

>This annual contract requires a 60 day written notice of termination from either the contractor or the owner to cancel the contract, unless contractor is terminated for unprofessional activities or failure to carry out this contract in a professional manner.

>Attached to this contract is the original scope of work that contractor submitted his price proposal for and the contractor will accomplish the tasks mentioned in a professional, and safe manner.

>Contractor is responsible for the areas located outside of the wooden privacy fence that surround the treatment facility.

>Contractor will provide a COI (Insurance) reflecting Forest Glen on it, as well as a W-9 for our office records.

Owner's Responsibilities- Provide Contractor with instructions and direction as needed, and inspect all work prior to payments.

ATTACHMENT 1-11

G&A CONTRACTS

RS Owner agrees to pay \$ 166.67 per month for the work stated above. Payments shall be made according to the payment table below.

Grand Total= \$ 2,000.00

RS Payment Table- (All invoices need to be submitted **NO Later Than 3pm on a Tuesday**, for payment to be ready by the following Friday)

Payments will be paid in 10 draws, upon completion and inspection of the agreed upon work for each stage of this project (Contractor is responsible for making sure that invoices are submitted in a timely manner so that completed work can be inspected and paid)

-Contractor will mow once a month from April 1st through November 1st, and every 6 weeks from November 1st through April 1st, after each lawn service, contractor will submit invoice for payment

RS Change Orders- Any change in the scope of work that involves an added cost NOT specified in the scope of work needs to have a Change order submitted to the owner's office for approval.

RS Signed Contract- Contractor is requesting a copy of this signed contract
Contractor would like the copy sent in the following manner-

☐ Postal Mail

RS Email- strongfellow58@gmail.com (address to send to)

☐ Pick up copy with first payment

RS There are 2 additional pages to this contract. (list provided below)

-Lawn Maintenance Scope of Work for Forest Glen Utility

-Map showing the location of the Forest Glen property in the Potranco Ranch Subdivision.

Lawn Maintenance Scope of Work
Forest Glen Utility Facility at Portanco Ranch

Contractor would be responsible for maintaining the lawn of the Forest Glen Property

This work includes

mowing and edging of grassy areas to provide a professional look upon completion,
picking up and disposing of all trash and debris in these common areas (Not including an obvious large illegal dumping)
applying and poison to all ant beds located in the area of work

**Landscaping company to be held responsible for any damages their crew causes to the permanent items such as fence etc.
**Company required to carry insurance covering commercial, auto, and general liability (minimum \$500,000)

Lawn Maintenance to occur once a month from April 1st through November 1st

During the winter months, November 1st through April 1st, Lawn Maintenance to occur every 6 weeks
(this schedule approximates to 10 visits a year)

Currently the approximate total area in square feet requiring this service is 75,000

Please let us know the following prices for this bid

Price to perform the above tasks on schedule for 1 year

Price per each additional visit (if needed)

Price to apply weed killer (if needed)

Price to apply fertilizer (if needed)

Price to trim trees (if needed)

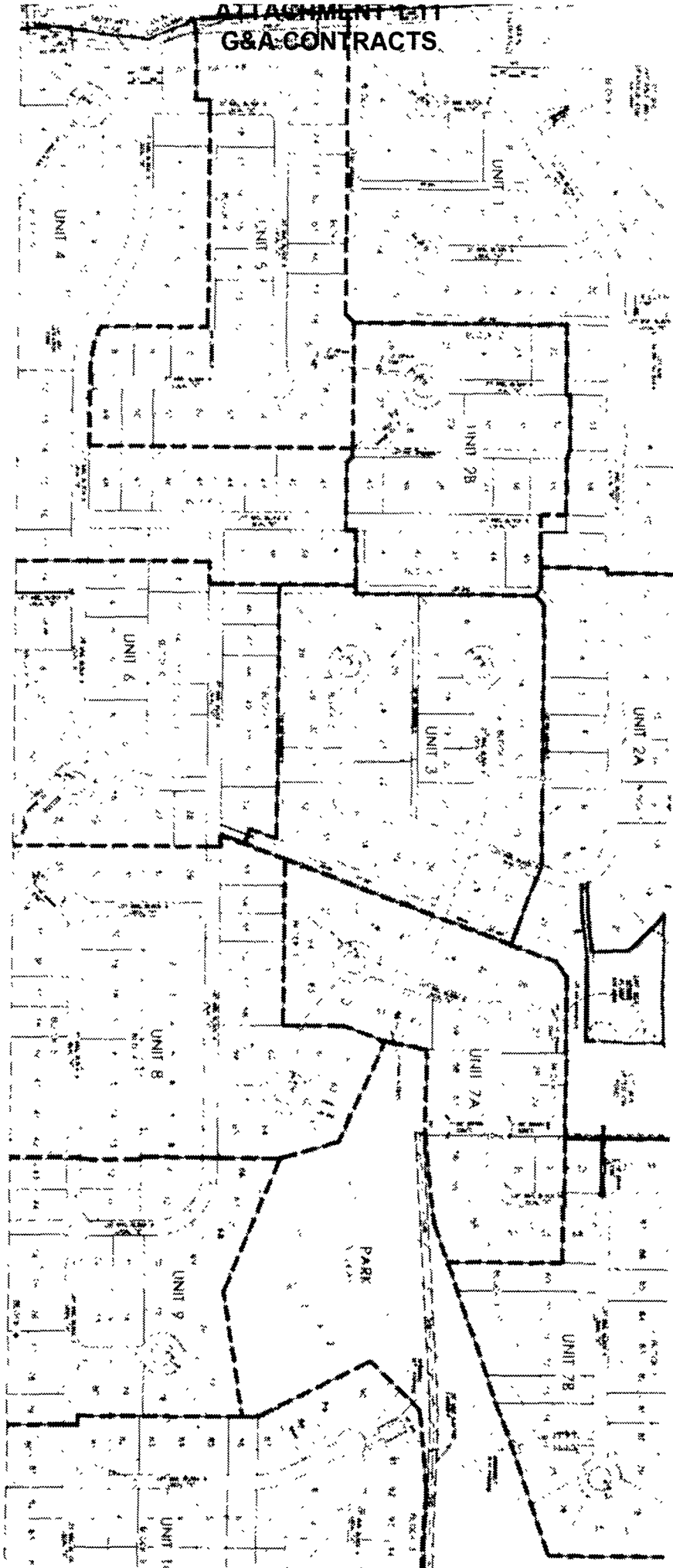
2000
200
75
75
N/A to C

**What other services does your company provide in addition to our requested scope of work? (please attach service/ pricing)

**Subdivision Map with areas of responsibility highlighted included with this page

Forest Glen Utility
Lawn Maintenance Area of Responsibility
n. of 21 FEB 2018

April 1st - November 1st = Every Month
November 1st - April 1st = Every 6 weeks



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

**AGREEMENT OF SALE AND PURCHASE
[Potranco Ranch Subdivision – Units 1, 2, and 3]**

This **AGREEMENT OF SALE AND PURCHASE** (the “*Agreement*”) is made and entered into by and between **320 Potranco Ranch, LLC**, a Texas limited liability company (the “*Seller*”), and **McMillin Texas Development, LLC**, a Texas limited liability company (the “*Buyer*”) or its assigns. In consideration of the sum of Ten Dollars and No/100 (\$10.00) paid by the Parties each to the other, the receipt and sufficiency of which are hereby acknowledged, and of the mutual promises contained in this Agreement, Buyer and Seller (sometimes collectively referred to as the “*Parties*” and sometimes individually referred to as “*Party*”) agree as follows:

RECITALS:

A. Seller owns or has the right to acquire, that certain 320 acre tract of land situated in Medina County, Texas more particularly described depicted in **Exhibit “B”** attached hereto (the “*Parent Tract*”) and Seller intends to develop the first three phases of a planned single-family residential subdivision to be known as Potranco Ranch Subdivision, Units I, II, and III, containing one hundred five (105) residential lots within the Parent Tract (the “*Subdivision*”).

B. Seller has prepared a preliminary plat of Unit 1 of the Subdivision and is in the process of procuring the approval by the Applicable Governmental Authorities (herein defined) for review and approval (the “*Preliminary Plat*”) which is attached as **Exhibit “C”**.

C. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, fifty two (52) or fifty three (53) single-family lots (including one (1) model home lot), following the lot split procedure set forth in Section 4.11 below (the “*Lots*”).

D. Seller anticipates developing future Units situated adjacent to the Subdivision, more particularly depicted in **Exhibit “D”** attached hereto (the “*Future Phase(s)*”) and desires to grant Buyer a right of first refusal with respect to the lots within the Future Phase(s), that are approximately one hundred twenty feet in width at the front building set back line.

AGREEMENTS:

In consideration of the Recitals, the agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

**I.
SALE OF LOTS**

In consideration of the purchase price and upon the terms and conditions hereinafter set forth, Seller will sell to Buyer and Buyer will purchase from Seller the following property:

(a) The Lots, together with all appurtenances pertaining thereto, including, but not limited to, all right, title and interest of Seller in and to all roads, alleys, easements, streets, rights-of-way, and water courses adjacent to, abutting, or serving the Lots, strips and gores, rights of ingress and egress to the Lots, and all permits, approvals, privileges and entitlements appurtenant to the Lots (the "***Appurtenances***"); and

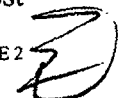
(b) Any and all improvements owned by Seller that are situated on and attached to the Lots (the "***Attached Improvements***") (for purposes of this Agreement, the Appurtenances and Attached Improvements will be included in the term "***Lots***").

**II.
PURCHASE PRICE, EARNEST MONEY AND INDEPENDENT CONSIDERATION**

2.1 **Purchase Price.** The purchase price (the "***Purchase Price***") for the Lots will be the amounts described below:

The "***Purchase Price***" for each Lot, as designated on **Exhibit "A"**, will be Sixty Six Thousand Sixty Five and No/100 Dollars (\$66,065.00) per Lot in Unit 1; Sixty Seven Thousand Sixty Five and No/100 Dollars (\$67,065.00) per Lot in Unit 2; and Sixty Seven Thousand Five Hundred Sixty Five and No/100 Dollars (\$67,565.00) per Lot in Unit 3. The Purchase Price for each Lot does not include any fees associated with construction or permitting of the single family homes to be constructed by Buyer on the Lot, such as building permits, which will be Buyer's responsibility and paid outside of closing, but does include Seller's Prepaid Impact Fees and Sewer Reservation Fees (herein defined).

2.2 **Earnest Money.** It is a condition precedent to the effectiveness of this Agreement that within three (3) business days after the Effective Date (herein defined), Buyer will deposit with the Title Company (herein defined) by wire transfer or delivery of a cashier's check, immediately available federal funds in the sum of Ten Thousand and No/100 Dollars (\$10,000.00) (the "***Initial Earnest Money***"). On or before the expiration of the Feasibility Period (defined below), if Buyer has elected to move forward with this Agreement, Buyer will deliver to the Title Company by wire transfer or delivery of a cashier's check, immediately available federal funds in the sum of Forty Three Thousand and No/100 Dollars (\$43,000.00) (the "***Additional Earnest Money***"). The Initial Earnest



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Money and the Additional Earnest Money are sometimes collectively referred to herein as the "***Earnest Money***". Upon the Title Company's receipt of the Initial Earnest Money or Additional Earnest Money, the Title Company will deposit the same into an interest-bearing account maintained at a federally insured bank and all interest earned thereon will be considered part of the Earnest Money. All such interest earned will be part of the Earnest Money. If Buyer fails to timely deliver any portion of the Earnest Money, then Seller may, as its sole and exclusive remedy, terminate this Agreement by written notice to Buyer, in which event the Earnest Money will be returned to Buyer and thereafter neither Seller nor Buyer will have any further obligation or liability hereunder except for those obligations that survive termination of this Agreement. Except as set forth herein, the Earnest Money will be non-refundable upon its deposit with the Title Company with the exception that, if Buyer timely exercises its right to terminate this Agreement prior to expiration of the Feasibility Period pursuant to Article VI hereof, or as otherwise provided in this Agreement, the Earnest Money will be returned to Buyer and thereafter neither Seller nor Buyer will have any further obligation or liability hereunder except for those obligations that survive termination of this Agreement. If Buyer does not exercise its right to terminate this Agreement prior to the expiration of the Feasibility Period, then the Earnest Money will be released to Seller upon Seller's completion of the Project Amenities (as herein defined) and submission of disbursement requests along with contractor's invoices for review and approval by Buyer, which Earnest Money shall be applied as herein provided.

2.3 **Application of Earnest Money.** If the transactions contemplated hereby are consummated in accordance with the terms and provisions hereof, then the Earnest Money will be credited to Buyer at the last Lot Closing.

2.4 **Independent Contract Consideration.** Within three (3) business days after the Effective Date and in consideration of Seller's execution of and entry into this Agreement and for providing Buyer with the benefit of the Feasibility Period and the right of first refusal set forth in Article XXII, Buyer will deliver to the Title Company, \$100.00 in cash (the "***Independent Contract Consideration***"), which Independent Contract Consideration will promptly be disbursed to Seller and will under no circumstances be refundable to Buyer.

**III.
PAYMENT OF PURCHASE PRICE**

The Purchase Price for each Lot will be payable in cash or wire transfer, cashier's or certified check, or other evidence of funds acceptable to Seller and the Title Company for immediate disbursement at the applicable Closing for such Lot. Seller will deliver the applicable Lot or Lots to Buyer at such Closing free of all liens and encumbrances other than the Permitted Encumbrances (herein defined).



IV.
CLOSING

4.1 **Closings.** The sale of the Lots from Seller to Buyer will take place in a series of closings (individually, the “**Closing**” and collectively, the “**Closings**”), beginning with the initial closing (“**Initial Closing**”) and continuing in accordance with the closing schedule set forth in Section 4.3 hereof (the “**Takedown Schedule**”). The date of each Closing will be referred to in this Agreement as a “**Closing Date.**” The Parties contemplate that there will be multiple Closings.

4.2 **Initial Closing.** At the Initial Closing, Buyer will select and acquire five (5) Lots (the “**Initial Closing Lots**”). The Initial Closing will occur on or before the tenth (10th) day following the Completion Date (herein defined), subject to the terms hereof.

4.3 **Succeeding Closings.** Buyer will select and acquire a minimum of five (5) Lots within one hundred and twenty (120) days after the Initial Closing (the “**Second Closing**”). Thereafter, Buyer will select and purchase a minimum of five (5) additional Lots within each of the eight (8) subsequent ninety (90) day periods thereafter and three (3) additional Lots for the final ninety (90) day period until Buyer has acquired all of the Lots, respectively (the “**Succeeding Closings**”).

4.4 **Credits.** Any Lots purchased by Buyer in addition to the number of Lots required to be purchased at the Initial Closing or Subsequent Closings will count as a credit toward Buyer’s subsequent minimum takedown obligations. Buyer may close on the Lots in any order (that satisfies the requirements of the Takedown Schedule) and in any combination, and Buyer may close on Lots prior to the scheduled Closings. If Buyer purchases the minimum number of Lots required to be purchased in any takedown period, as indicated in the Takedown Schedule, prior to the end of such takedown period, the Subsequent Closings will not be accelerated. If the Takedown Schedule or the time for a Closing is abated, postponed, or tolled under this Agreement or delayed by mutual agreement of the parties, the time period to consummate each Subsequent Closing will be correspondingly extended on a day for day basis.

4.5 **Closing Prior to Completion.** At Buyer’s option, Buyer may purchase a Lot or Lots prior to the Lot or Lots being Complete, conditioned on the Preliminary Plat, after approval by the Applicable Governmental Authorities (“**Approved Plat**”), having been recorded in the appropriate public records by Seller. Seller will not be required to record the Approved Plat prior to the Target Completion Date. However, notwithstanding the fact that Buyer may exercise its right to waive the obligation that the Lot or Lots are Complete, any such waiver will not be a waiver of Seller’s obligation to Complete the Lots as required under this Agreement. If Buyer exercises the option to purchase a Lot or

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Lots prior to the Lots being Complete, then Seller will allow Buyer to enter onto the Lots for the purpose of commencing construction on the Lot or Lots. Buyer's entry onto the Lots is at Buyer's sole risk, except for any intentional, reckless, or grossly negligent act or omission of Seller, its agents, or licensees.

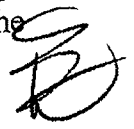
4.6 **Title Company and Deliveries.** Each Closing will be held at the office of First American Title Company, 1826 North Loop 1604 West, Suite 175, San Antonio, Texas 78248 Attention: Rita Desselle, Telephone: (210)390-3610, Facsimile: (866) 385-0650 (the "***Title Company***"). Each Party's obligations at each Closing are conditioned upon the satisfaction of all of the obligations of the other Party and the Title Company and all other conditions required under this Agreement to be met at or prior to such Closing. The procedure to be followed by the Parties in connection with each Closing will be as follows:

(a) At the applicable Closing, Seller will cause to be delivered to Buyer, all of the items specified herein, including the following documents and instruments duly executed and, if required, acknowledged, in recordable form:

(i) A Warranty Deed (the "***Deed***") executed in favor of Buyer, dated as of the Closing Date, conveying the Lots to be acquired at such Closing to Buyer subject only to the Permitted Encumbrances, free of any liens and in form attached hereto as **Exhibit "E"**;

(ii) Owner Policy of Title Insurance ("***Owner Policy***") issued by the Title Company's insurance underwriter (which must be reasonably satisfactory to Buyer) in the amount of the Purchase Price for the applicable Lots and insuring that Buyer owns fee simple title to the applicable Lots free and clear of all encumbrances other than the applicable Permitted Encumbrances and the standard printed exceptions with the exception as to restrictions deleted (except for those included within the Permitted Exceptions), the area and boundary exception modified to read "Any shortages in area" (assuming that Buyer pays the applicable premium therefor and provides a current survey), the exception as to taxes limited to the year in which the applicable Closing occurs and subsequent years, and the parties in possession exception deleted;

(iii) Certification contemplated by Section 1445 of the Internal Revenue Code, in which an authorized officer of Seller (or Seller's general partner) certifies to Buyer that Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

(iv) A properly-executed and recordable release or partial release of any and all liens affecting the Lots being conveyed;

(v) Evidence acceptable to the Title Company authorizing the consummation by Seller of the purchase and sale transaction contemplated hereby and the execution and delivery of the closing documents on behalf of Seller;

(vi) An affidavit as to debts and liens and an affidavit as to parties in possession in the forms customarily utilized in Texas; and

(vii) Tax certificates or other evidence that all ad valorem taxes applicable to the Lots being purchased at that Closing have been paid or will be paid up to the date of Closing and for all prior years

(b) At the applicable Closing, Buyer will cause to be delivered to Seller the following:

(i) Funds representing the Purchase Price for the applicable Lots in accordance with Article III hereof, as may be adjusted as set forth herein; and

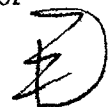
(ii) Evidence reasonably acceptable to Seller and the Title Company authorizing the consummation by Buyer of the purchase and sale transaction contemplated hereby and the execution and delivery of any closing documents on behalf of the Buyer.

4.7 **Recording and Delivery.** Upon the completion of the deliveries specified in Section 4.6 hereof, the Title Company (a) will cause the Deed and the other appropriate closing documents to be immediately recorded in the appropriate records of the county in which the Lots are located, and, upon recordation, will deliver the recorded documents to Buyer, (b) will deliver all of the other closing documents to Buyer and (c) will deliver the proceeds from the sale to Seller.

4.8 **Seller Costs.** Seller will pay the following costs and expenses in connection with each Closing:

(a) Preparation of the Deed;

(b) The cost of any Owner Policy excluding any exceptions or endorsements thereto requested by Buyer



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

- (c) Seller's own attorneys' fees for the Closing;
- (d) Preparation and recording of any lien releases for the Lots then being purchased (other than for liens created or caused by Buyer);
- (e) One-half (1/2) the cost of any Title Company escrow fee;
- (f) Seller's portion of the prorated taxes and assessments; and
- (g) Cost of tax certificates.

4.9 **Buyer Costs.** Buyer will pay the following costs and expenses in connection with each Closing:

- (a) Any expense associated with financing obtained by Buyer with respect to the Lots then being purchased;
- (b) Buyer's own attorneys' fees for the Closing;
- (c) The cost of recording the Deed;
- (d) One-half (1/2) the cost of any Title Company escrow fee;
- (e) Buyer's portion of the prorated taxes and other assessments; and
- (f) The cost of any survey, if required by Buyer.

4.10 **Identification of Lots For Closings.** Buyer may select which Lots it is purchasing at each Closing. Not later than the date which is thirteen (13) days prior to the Initial Closing, and at least ten (10) days in advance of each Subsequent Closing, Buyer will give Seller written notice specifying the particular Lots to be acquired at the applicable Closing, and advising Seller as to whether there will be any financing involved in connection with Buyer's acquisition of those specified Lots, and, if so, advising Seller as to the amount to be financed and the complete legal name of Buyer's lender.

4.11 **Lot Split.** Upon Seller notifying Buyer that the streets are to subgrade elevation and the Lots are rough graded (if applicable), a split of the lots in Unit 1 of the Subdivision will be conducted by Buyer and Third-Party Builder ("**TPB**") in order to divide the thirty five (35) lots depicted on **Exhibit "C"** in Unit 1 of the Subdivision between Buyer and TPB. If no TPB exists, then Seller shall serve as the TPB for purposes of this section. Buyer will propose a division of the lots in Unit-1 of the Subdivision into two (2) similar groupings that have seventeen (17) Lots and one (1) additional Lot to be



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

determined by coin-toss, being reasonably identical in their attributes and characteristics. Within five (5) days of such division by Buyer, TPB will select one of the two lot groupings, and inform Seller and Buyer of such selection. Buyer and TPB will flip a coin to determine which Party will receive the one (1) additional Lot in Unit-1, and the Party winning the coin-toss will inform Seller. Buyer and TPB will follow the same process to divide the thirty four (34) Lots in Unit 2 and the thirty six (36) Lots in Unit 3. Upon the determination of the lot groupings for each Unit, Seller and Buyer will sign an amendment to this Agreement setting forth the results of the lot split on Exhibit "A" hereto. Seller represents to Buyer that Seller has negotiated a materially similar lot-split provision in the lot sale agreement with TPB. Prior to the split of the Lots in each Unit as depicted on Exhibit "C" and Exhibit "C-1" in the Subdivision, Seller shall stake the front boundary lines of the Lots then being divided.

4.12 **Legal Description.** Inasmuch as the Approved Plat is yet to be recorded, Seller and Buyer acknowledge that the lot and block legal description for the Lots technically may be legally insufficient for the purpose of supporting an action for enforcement of this Agreement. Because the Parties desire to execute this Agreement to provide for the right of enforcement, Seller and Buyer agree that (i) they are experienced in transactions of this nature, (ii) they are familiar with the location of all of the Lots, (iii) each Party waives any and all claims of an insufficient legal description, including, but not limited to, any and all claims under the Statute of Frauds, and (iv) upon completion of, and recordation of, the Approved Plat and the lot split described in Section 4.11, this Agreement will be amended to incorporate the legal description of the Lots as finally subdivided. The Approved Plat after it has been recorded in the appropriate public records of the county in which the Lots are located will be referred to as the "***Recorded Plat***".

**V.
POSSESSION**

Buyer will be entitled to full possession of the Lots being acquired at each Closing, subject only to the Permitted Encumbrances.

**VI.
TITLE REVIEW, FEASIBILITY PERIOD, AGREEMENTS TO BE REACHED AND
APPROVED PLAT**

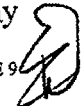
6.1 **Title Commitment.** On or before ten (10) business days after the Effective Date hereof, Seller will deliver to Buyer a Commitment for Title Insurance (the "***Commitment***") issued by the Title Company covering the Lots, together with legible copies of all items referred to therein as exceptions, such Commitment to be dated not earlier than the Effective Date and showing fee simple title to the Lots to be in Seller's name.



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

6.2 **Review.** (a) Buyer shall have fifteen (15) days after receipt of the latest to be received of: (i) the Plat; (ii) the Exception Documents; and (iii) the Title Commitment, within which to notify Seller in writing of its objections to the Title Commitment or Exception Documents. The items shown in Schedule C of the Title Commitment (except Item No. 3 relating to payment of the Purchase Price) shall automatically be deemed an objection by Buyer, which Seller agrees to satisfy, at or prior to Closing. If Buyer shall fail to so notify Seller prior to the expiration of the fifteen (15) day period, Buyer shall be deemed to have approved the Title Commitment, Exception Documents, and Plat. In the event Buyer does notify Seller of Buyer's objections by the end of the fifteen (15) day period, Seller may, but shall not have any obligation to, cure such objections. If, within twenty (20) days of Seller's receipt of Buyer's objections, either (i) Seller has not cured such objections; or (ii) Seller delivers written notice to Buyer that Seller is unwilling or unable to cure such objections, Buyer may, at its option, prior to the expiration of the Review Period, either: (i) terminate Buyer's obligations under this Contract by notice, in writing, to Seller, in which event this Contract will terminate, the Earnest Money will be promptly returned to Buyer, and neither party will thereafter have any further rights or obligations hereunder, except as otherwise expressly provided herein; or (ii) Buyer may accept title to the Lots thus waiving Buyer's objections and no adjustment shall be made to the Purchase Price. Buyer's failure to timely deliver the notice set forth above shall be deemed to be acceptance of the Title Commitment and Exception Documents by Buyer and waiver of any right to terminate.

(b) Seller will provide Buyer with an updated title commitment at least ten days prior to each Closing. In the event that such updated Title Commitment reflects any additional exceptions other than the Permitted Exceptions or exceptions caused by Buyer, Buyer will have the same rights and remedies as set forth above with respect to the original Title Commitment and the Closing will be delayed until the objections are cured by Seller or waived by Buyer. Seller will be responsible for discharging or otherwise satisfying, to the Title Company's satisfaction, any "new" exceptions appearing on Schedule B of the Title Commitment that (i) are first created subsequent to the Effective Date, (ii) are not set forth on the original Title Commitment reviewed by Buyer hereunder, (iii) are not approved by Buyer in writing prior to the creation thereof, and (iv) are not caused by Buyer, its agents, employees, or contractors. If, (i) Seller has not cured such exceptions; or (ii) Seller delivers written notice to Buyer that Seller is unwilling or unable to cure such exceptions, Buyer may, at its option, prior to the Closing: (i) terminate Buyer's obligations under this Contract by notice, in writing, to Seller, in which event this Contract will terminate, the Earnest Money will be promptly returned to Buyer, and neither party will thereafter have any



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

further rights or obligations hereunder, except as otherwise expressly provided herein; (ii) if less than all of the Lots are affected, terminate Buyer's obligations to purchase the Lots affected by the new exceptions (the "***Excluded Lots***"); or (iii) Buyer may accept title to the Lots thus waiving Buyer's objections and no adjustment shall be made to the Purchase Price. Buyer's failure to timely deliver the notice set forth above shall be deemed to be acceptance of the Title Commitment and Exception Documents by Buyer.

(c) At Closing, Seller will cause the Title Company to issue to Buyer, at Seller's expense, an Owner's Policy of Title Insurance based on the latest Title Commitment covering the Lots then being purchased. Such policy will be issued by the Title Company, will be in the amount of the Purchase Price with respect to the Lots covered, and will insure Buyer's fee simple title to the Lots subject to no exceptions other than the Permitted Exceptions.

6.3 **Feasibility Period.** (a) Within five (5) days after the Effective Date hereof, Seller will provide to Buyer complete and accurate copies of (i) all agreements in Seller's possession or control which Seller has entered into or are binding upon Seller (or otherwise related to the Subdivision) in connection with the ownership, use, development and operation of the Subdivision (including without limitation "will serve" letters or contracts with the utility providers for electricity, water, telephone, and cable television) and (ii) all surveys, plats (recorded and unrecorded), site plans, environmental reports, construction plans for the roads, drainage culverts and electrical improvements, drainage plan, grading plan, endangered species and geologic reports, seismic reports, geotechnical reports, market studies, feasibility studies and analyses, appraisals, utility capacity letters or contracts, development entitlement documents, agreements, specifications, reports and findings wetland studies, soil studies, engineering studies (including without limitation a Phase I Environmental Site Assessment) and other similar reports, and letters concerning endangered species or flora in Seller's possession or control with respect to the Subdivision or as may be reasonable requested by Buyer. Collectively, the documents described in this Section will be known as "***Seller's Documents***". Buyer will have until the forty fifth (45th) day following the Effective Date to conduct, at Buyer's sole expense, such physical, engineering and feasibility studies as Buyer deems appropriate in an effort to determine whether or not the Lots are suitable for Buyer's intended use and for other purposes (the "***Feasibility Period***").

(b) During the Feasibility Period and thereafter until termination of this Agreement, Buyer and its agents, employees and independent contractors will have the right to come onto the Subdivision and Lots for the purpose of inspecting the Lots and to conduct soil borings and other environmental, archaeological,



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

geological and engineering tests or studies. Any inspection, examination or test will not unreasonably interfere with Seller's use of the Lots and will not violate any law or regulation of the Applicable Governmental Authorities having jurisdiction over the Lots. Buyer and its agents and representatives will: (i) not interfere with the construction of the streets and other improvements by Seller or its contractors; (ii) not damage any part of the Subdivision or any personal property except as reasonably necessary in connection with customary due diligence investigations; (iii) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees; (iv) maintain commercial general liability (occurrence basis) insurance in terms and amounts reasonably satisfactory to Seller covering any accident arising in connection with the presence of Buyer, its agents, and its representatives on the Subdivision, and naming Seller as an Additional Insured; (v) promptly pay when due the costs of all tests, investigations and examinations done with regard to the Subdivision; (vi) not permit any liens to attach to the Subdivision by reason of the exercise of its rights hereunder; (vii) fully restore, as close as reasonably practicable, any damage caused by Buyer or its agents and representatives to the Subdivision to substantially the same condition in which it was found before any such inspections or tests were undertaken; and (viii) except as otherwise required by law, not reveal or disclose any information obtained during the Feasibility Period concerning the Subdivision and Seller's Documents to anyone outside Buyer's organization other than Buyer's attorneys, architects, engineers, surveyors and other representatives and consultants used by Buyer in connection with the examination of the Lots (the "**Buyer's Entry Obligations**"). BUYER WILL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, CAUSES OF ACTION, DAMAGES, LIABILITIES, AND EXPENSES (INCLUDING REASONABLE LEGAL FEES AND EXPENSES) ARISING OUT OF A VIOLATION OF BUYER'S ENTRY OBLIGATIONS; PROVIDED, HOWEVER, THAT THE FOREGOING INDEMNITY, DEFENSE, AND HOLD HARMLESS OBLIGATIONS DO NOT APPLY TO (I) ANY LOSS, LIABILITY COST OR EXPENSE TO THE EXTENT ARISING FROM OR RELATED TO THE ACTS OR OMISSIONS OF SELLER, OR ITS AGENTS OR CONSULTANTS, (II) ANY DIMINUTION IN VALUE IN THE LOTS ARISING FROM OR RELATING TO MATTERS DISCOVERED BY BUYER DURING ITS INVESTIGATION OF THE LOTS, (III) ANY LATENT DEFECTS IN THE LOTS DISCOVERED BY BUYER, OR (IV) THE RELEASE OR SPREAD OF ANY HAZARDOUS SUBSTANCES WHICH ARE DISCOVERED (BUT NOT DEPOSITED) ON OR UNDER THE LOTS BY BUYER. THIS INDEMNITY WILL SURVIVE ALL CLOSINGS PURSUANT TO THIS AGREEMENT AND ANY TERMINATION HEREOF.

(c) If during the Feasibility Period, Buyer will, for any reason in Buyer's



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

sole discretion, judgment or opinion, be dissatisfied with any aspect of the Subdivision or Lots or any item examined by Buyer pursuant to this Agreement, then Buyer will be entitled, as its sole remedy, to terminate this Agreement by giving written notice to Seller on or before the final day of the Feasibility Period (but no later than 5:00 p.m., C.S.T. on the final day of the Feasibility Period), whereupon all of the provisions of this Agreement except those that expressly survive the termination hereof will terminate. Upon such termination, the Initial Earnest Money will be returned to Buyer.

6.4 **Agreements to be Reached.** Prior to the expiration of the Feasibility Period, Buyer and Seller will use good faith efforts to negotiate and agree upon the following:

(a) **Restrictions.** The form and substance of the Restrictions (herein defined).

(b) **Entry.** The concept, location, and other aspects of the entry monument for the Parent Tract and a walking trail, to be provided by Seller with respect to development of the Subdivision (the "*Project Amenities*").

Seller will provide Buyer with draft copies of the Restrictions and general depictions of the Project Amenities on or before twenty (20) days after the Effective Date. Prior to the last day of the Feasibility Period, Buyer and Seller will use commercially reasonable efforts to agree upon the Restrictions and Project Amenities. If Seller and Buyer agree on the Restrictions and Project Amenities then Seller and Buyer will sign an amendment to this Agreement setting forth the agreed upon documents and depictions. If Seller and Buyer do not agree on the Restrictions and Project Amenities prior to the expiration of the Feasibility Period, then either Party may terminate this Agreement by giving written notice to the other Party on or before the final day of the Feasibility Period, whereupon the Earnest Money will be returned to Buyer and thereafter neither Seller nor Buyer will have any further obligation or liability hereunder except for those obligations that survive termination of this Agreement.

6.5 **Approved Plat Modification.** If the Applicable Governmental Authorities require material changes to the Approved Plat or Seller desires to make material changes to the Approved Plat then Seller will submit to Buyer a copy of the revised plat showing the proposed material changes. If Buyer does not approve of the material changes to the Approved Plat then Buyer may terminate this Agreement by sending Seller written notice within fifteen (15) days of receiving the revised plat. If Buyer terminates this Agreement then the Earnest Money will be returned to Buyer and thereafter neither Seller nor Buyer will have any further obligation or liability hereunder except for those obligations that



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

survive termination of this Agreement. If this Agreement is not terminated by Buyer then the proposed material changes to the Approved Plat will be deemed approved by Buyer. For purposes of this Article, "**material changes**" will mean any modification of the Approved Plat that decreases size, width at the front or rear setbacks or the number of Lots to be purchased, materially and adversely affects Buyer's proposed use of the Subdivision (including without limitation causes increases in the cost to construct homes on the Lots), or adds or changes easements or setback lines. Seller will only be required to submit material changes to the Approved Plat to Buyer.

**VII.
PRORATIONS AND ADJUSTMENTS**

With respect to each Closing, ad valorem taxes (except rollback taxes), homeowner's dues and assessments, and other tax assessments, special or general, allocable to the Lots being purchased by Buyer at such Closing will be prorated between Seller and Buyer as of the applicable Closing Date, utilizing the best available computations of such taxes, so that Seller will be liable for all ad valorem taxes, assessments and homeowner's dues allocable to such Lots prior to the applicable Closing Date and Buyer will be liable for such taxes, assessments and homeowner's dues from and after such date. If a Closing occurs at a time when the Lots have been platted but the Applicable Governmental Authorities have not assessed ad valorem taxes based on the Recorded Plat, then ad valorem taxes and assessments will be prorated based on the number of gross square feet of land within the Lots being purchased as compared to the total number of gross square feet of land within the larger tax parcel assessed by the Applicable Governmental Authorities. If any ad valorem taxes to be prorated at such Closing are not known, then the taxes prorated at such Closing will be based upon the assessed value of the applicable Lots for the preceding year, and a final adjustment will be made between the Parties once actual tax values are known for the applicable year. Buyer will assume all ad valorem taxes and other assessments allocable to a Lot for the year during which the applicable Closing Date occurs and for subsequent years unless the Lot has not been rendered and an ad valorem tax account has not been established for such Lot. In which case, Buyer's pro rata share of the ad valorem taxes will be credited to Seller and Seller will assume all ad valorem taxes and other assessments allocable to such Lot for the year during which the applicable Closing Date occurs and pay the ad valorem taxes associated with the acreage ad valorem tax account. Seller will pay all taxes and other assessments against the Lots by any taxing authority for each Lot based on change in use or ownership, including, without limitation, all rollback taxes. In the event that any rollback or other similar tax is not assessed against any Lot until after closing, Seller will remain obligated to promptly pay such tax and indemnify Buyer for same. The provisions of this Article will survive the Closings.

VIII.



COMMISSIONS

Seller is represented by Dale Kane of First American Commercial Property Group ("Broker") and shall compensate Broker pursuant to a separate agreement. Except as set forth above, Seller and Buyer each represent and warrant to the other that it, and its officers, employees and agents, have not contracted for any real estate commissions or similar fees, nor has it engaged the services of any agent, broker or similar party in connection with this transaction. Each Party hereto will indemnify and hold the other Party hereto harmless from the claims of any agent, broker or similar party. The provisions of this Article will survive the Closings and termination of this Agreement.

IX.

DEVELOPMENT OF THE LOTS AND OTHER OBLIGATIONS

9.1 **Development.** Seller is currently in the process of developing the Subdivision (including constructing or installing the improvements described in Section 9.2 hereof) in a good, proper and workmanlike manner, and in accordance with applicable law and will cause the Lots to become Complete (herein defined) in accordance with the terms of this Agreement. All materials used to Complete the Lots will be new first-class materials. Seller will, at its expense, obtain and post all bonds and other security necessary or required by the Applicable Governmental Authorities to Complete the Lots. Seller covenants and agrees that Seller will use good faith and commercially reasonable efforts to Complete the Lots on or before the Target Completion Date (herein defined). Notwithstanding the foregoing, if Seller fails to Complete the Lots by the Target Completion Date, then Buyer may, at its option extend the Target Completion Date by not more than sixty (60) days in the aggregate or terminate the contract and receive a refund of the Earnest Money.

9.2 **Completion Date.** The term "***Completion Date***" will mean that date on which all of the Lots in the Subdivision are Substantially Complete. The Lots in the Subdivision will be "***Substantially Complete***" when all of the following will have occurred:

(a) The plat of the Subdivision has been approved by all Applicable Governmental Authorities and recorded in the in the appropriate public records of the county in which the Lots are located, and Buyer has received the following from Seller: (i) a full-sized copy of the Recorded Plat, (ii) one pdf of the Recorded Plat, (iii) one CD-ROM containing the Autocad file of the Plat, (iv) one (1) full-sized copy of the approved subdivision construction plans for the Subdivision; (v) a copy of the Master Drainage Plan; (vi) a copy of the grading plan (if applicable) for the Subdivision.



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

(b) Installation of a fully functioning and operational potable water distribution system (including water meter boxes), sanitary sewer service, and storm water drainage system (including detention or retention ponds as may be necessary) servicing the Subdivision (with sufficient capacity allocated to the Lots for single-family residential use), all in accordance with the standards and specifications imposed by the Applicable Governmental Authorities and utility providers so that Buyer will have the immediate right and ability to connect to potable water, sanitary sewer service (including treatment facilities) and storm water drainage system at a perimeter boundary of each Lot as well as install all necessary meters at the time of such connection. Completion of the utilities described in this Section includes completion of all off-site facilities necessary to cause the potable water, sanitary sewer service, and storm water drainage system to be operational upon connection and accepted for service by the Applicable Governmental Authorities or Public Utility District.

(c) Installation of a water re-use distribution system (including water meter boxes) servicing the Subdivision (with sufficient capacity allocated to the Lots for single-family residential use), in accordance with the standards and specifications imposed by the Applicable Governmental Authorities and utility providers. The water re-use system will not be functional until there are enough occupied residences generating wastewater flows to the treatment plant to provide sufficient flows to supply the re-use system. Seller anticipates this will occur when there are approximately thirty five (35) occupied homes.

(d) Installation of streets and street signs in the Subdivision (including the Lots) and other necessary offsite streets in compliance with the plans and specifications and the standards and specifications imposed by the Applicable Governmental Authorities.

(e) Prepare and implement (or will cause to be prepared and implemented) for the infrastructure development in the Subdivision (including but not limited to streets, drainage and utility improvements) a storm water pollution prevention plan (the "**SWPPP**") and will provide Buyer with one copy of the SWPPP, a copy of its Notice of Intent filed with the EPA and/or any other Applicable Governmental Authorities exercising a similar function (including but not limited to the Texas Commission on Environmental Quality ("TCEQ"), a copy of the EPA's and/or TCEQ's SW Permit for the Subdivision, or the equivalent thereof, and a copy of the Federal and/or Texas Pollutant Discharge Elimination System Permit, as applicable.

(f) To the extent that Seller has placed or caused to be placed any fill or



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

spoils materials on any Lot in excess of 6" in depth, Seller will cause such materials to be graded and compacted in manner that meets or exceeds the requirements of Federal Housing Administration Data Sheet 79-G, and Seller will provide to Buyer a letter certified by a licensed soil engineer to such work meets or exceeds such requirements.

(g) Buyer has been provided one copy of the address plat and utility plan for the Subdivision.

(h) All of the corners of all of the Lots have been staked with iron pins after completion of street and utility construction.

(i) Buyer has been provided with a copy of the recorded Restrictions.

(j) None of the Subdivision is located in any flood zone, flood hazard area, flood plain or similarly designated zone on the applicable pending or existing FEMA maps or in a "wetlands" area as defined by the Applicable Governmental Authorities.

(k) Installation of such underground and overhead electric, gas, telephone, and fiber optic (collectively "dry utilities") for each Lot as will be necessary to service the dwelling unit to be constructed on such Lot so that Buyer will have the immediate right and ability to connect to such dry utilities at a perimeter boundary of each Lot as well as install any and all necessary meters at the time of such connection.

(l) The Lots will be reasonably cleared of any trash, debris, construction spoils, and other materials not normally found on lots of this nature.

9.3 **Inspection.** When all the Lots in the Subdivision are Complete, Seller will send written notice (the "***Substantial Completion Notice***") to Buyer along with a Completion Certificate in the form attached as **Exhibit "F"**, and executed by Seller's engineer. Upon receipt of the Substantial Completion Notice and Completion Certificate, Buyer will have a period of ten (10) days within which to inspect the Lots and evaluate the information and documentation provided by Seller and to notify Seller in writing if any condition described in Section 9.2 remains unsatisfied and what needs to be done to satisfy the condition, in Buyer's reasonable opinion (the "***Buyer's Objection Notice***"). Buyer's failure to so notify Seller within that ten-day period will be deemed Buyer's agreement that all conditions described in Section 9.2 have been satisfied and that the Lots are Substantially Complete. If Buyer sends Seller a Buyer's Objection Notice then Seller and Buyer will inspect the Subdivision at a mutually agreeable time to review the items in the Buyer's Objection Notice. At such inspection, Buyer and Seller will inspect the



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Lots and establish a list of deficiencies, if any, then existing with respect to the same. Such deficiencies (collectively, the "Deficiencies") will be detailed on a written inspection report and Buyer and Seller will determine at the time whether such Deficiencies are of such a nature as to require correction prior to the Initial Closing. If, in Buyer's judgment, such Deficiencies require correction prior to the Initial Closing, then Seller will promptly correct such Deficiencies and notice to Buyer for a further inspection. After completion of the Deficiencies to Buyer's reasonable satisfaction, the Lots will be deemed Substantially Complete. At such time as Buyer and Seller agree that any remaining Deficiencies do not require correction prior to the Initial Closing, then the Parties will authorize the Initial Closing to occur, with punchlist items to be repaired or otherwise corrected to Buyer's satisfaction, at Seller's expense, within thirty (30) days following the date of such inspection, unless otherwise agreed between the Parties. Buyer's approvals hereunder will not, in any way, be deemed to waive any warranty by Seller or imply any warranty, representation or approval by Buyer that any improvements, if constructed in accordance with such plans or specifications, are structurally sound, will have a market value of any particular magnitude or will be in compliance with any applicable law. Seller will remain responsible for two years from the Initial Closing (and will repair at Seller's expense in a timely manner) any defects in the Subdivision which are not caused by Buyer, its employees, agents, contractors and subcontractors.

9.4 **Target Completion Date.** In the event that the Completion Date for the Subdivision does not occur on or before December 31, 2012 (the "***Target Completion Date***"), Buyer will be entitled to either: (i) terminate the Agreement, the Earnest Money will be returned to Buyer and thereafter neither Seller nor Buyer will have any further obligation or liability hereunder except for those obligations that survive termination of this Agreement, or (ii) grant an extension of the time to Seller not to exceed sixty (60) days. Buyer will send written notice to Seller of its election on or before the Target Completion Date, and if no notice is given then it will be deemed that Buyer elected (ii) above. If Buyer elects or is deemed to have elected (ii) above and the Lots are still not Complete as of the 60th day after the Target Completion Date, then, Seller will be in default and Buyer may pursue the other remedies available to it under this Agreement.

9.5 **Conditional Assignment of Warranties.** Seller hereby assigns to Buyer any and all warranties procured by Seller from any other contractors who performed the work in the Subdivision, to the extent legally possible, to allow Buyer to enforce such warranties if Seller is unable or otherwise fails to enforce such warranties due to bankruptcy, cessation of business activity or complete termination of operations.

9.6 **Post Closing Obligations.** The term "***Final Completion Date***" will mean that date on which the last of the following is completed. Seller will use good faith efforts to timely perform the following obligations:



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

(a) On or before the one hundred twentieth day after the Initial Closing, Seller will cause all roads shown on the Recorded Plat to be transferred to the homeowner's association or Public Improvement District for maintenance. If Seller does not complete such transfers by the one hundred twentieth day after the Initial Closing and Buyer sends written notice to Seller of such default, then the takedowns will be abated until the legitimate deficiencies have been completed; however, if the transfers still have not been completed within the Cure Period, then Seller will be in default, and Buyer may pursue the remedies available to it under this Agreement.

(b) Seller will install the Project Amenities on or before the one hundred twentieth day after the Initial Closing. If Seller does not complete the Project Amenities by the one hundred twentieth day after the Initial Closing and Buyer sends written notice to Seller of such default, then the takedowns will be abated until the legitimate deficiencies have been completed; however, if the Project Amenities and walking trail system still have not been completed within the Cure Period, then Seller will be in default, and Buyer may pursue the remedies available to it under this Agreement.

(c) Seller will install U.S. Postal Service compliant cluster mailboxes for the Subdivision on or before the ninetieth day after the Initial Closing (the "**Mailboxes**"), subject to U.S. Postal Service approval. If Seller does not complete the Mailboxes by the ninetieth day after the Initial Closing and Buyer sends written notice to Seller of such default, then the takedowns will be abated until the legitimate deficiencies have been completed; however, if the Mailboxes still have not been completed within the Cure Period, then Seller will be in default, and Buyer may pursue the remedies available to it under this Agreement. Should the U.S. Postal Service be unwilling to allow Seller to utilize cluster boxes to serve the property, the residences will be served by individual mailboxes, and Buyer will be responsible for installation of said mailboxes with construction of the residences.

(d) Seller will provide Buyer with copies of the as-built construction plans for the water and sewer improvements serving the Subdivision on or before the sixtieth day after the Initial Closing (the "**As-built Plans**"). If Seller does not deliver the As-built Plans by the sixtieth day after the Initial Closing and Buyer sends written notice to Seller of such default, then the takedowns will be abated until delivery to Buyer; however, if Seller does not deliver to Buyer the As-built Plans by the ninetieth day after the Initial Closing, then Seller will be in default, and Buyer may pursue the remedies available to it under this Agreement.

(e) Seller will at all times maintain all lots owned by Seller within the Subdivision in a clean, neat condition which will include mowing and weeding as



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

necessary and removing any runoff (mud or otherwise) on the street in front of the Lots.

(f) Seller will maintain the Project Amenities which will include mowing and weeding as necessary and removing any runoff (mud or otherwise) on the street in front of the Lots. Seller will remain responsible for the maintenance and operation of the foregoing improvements until the date upon which such areas have been dedicated to the HOA or Public Improvement District for maintenance.

(g) Seller will procure the final acceptance letters, for the streets, drainage, sanitary sewer, water improvements and drainage improvements in the Subdivision and deliver same to Buyer on or before the one hundred and twentieth day after the Initial Closing (the "**Acceptance Letters**"). If Seller does not deliver to Buyer the Acceptance Letters by the one hundred and twentieth day after the Initial Closing and Buyer sends written notice to Seller of such default, then the takedowns will be abated until delivery to Buyer; however, if Seller does not deliver to Buyer the Acceptance Letters within the Cure Period then Seller will be in default, and Buyer may pursue the remedies available to it under this Agreement.

(h) Seller shall be responsible for the procurement, assumption or replacement of any improvement, maintenance, warranty or performance bonds for the Subdivision.

9.7 **Survival.** The provisions of this Article will survive each Closing and the termination of this Agreement for two (2) years.

X.

RESTRICTIVE COVENANTS AND ASSOCIATION DOCUMENTS

10.1 **Restrictive Covenants.** Buyer will comply with the Declaration covering the Subdivision (collectively, the "**Restrictions**"). The Restrictions will also include specific provisions which: (i) reserve unto the architectural control committee provided for in the Restrictions (the "**ACC**"), the right to approve and/or disapprove plans and specifications for the construction of homes on the Lots prior to the commencement of construction; and (ii) require that each home on each Lot comply with Restriction to be provided by Seller. Without limiting the generality of the foregoing, plans must be approved by the ACC prior to commencement of any construction activities including, but not limited to, lot clearing, and all buildings and construction must conform to the requirements of the Restrictions. Review and approval by the ACC will not waive Buyer's obligation to apply for and receive all permits, approvals and licenses required by the Applicable Governmental Authorities, if any. Seller shall reasonably cooperate with



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Buyer to obtain written evidence that Buyer's architectural plans and specifications relating to the construction of homes on the Lots have been approved by the applicable architectural review board or committee and all other authorities under or pursuant to the Declaration or other restrictions or encumbrances applicable to the Lots prior to the end of the Feasibility Period. It is contemplated that Buyer's Plans will be comprised of a master set of plans covering all of the different homes to be constructed by Buyer upon the Lots and that, upon the approval of Buyer's Plans by the ACC, Buyer will not be required to resubmit a particular plan prior to the time that a home conforming to such plan is to be constructed. Buyer shall submit the plans and specifications to Seller relating to the construction of homes on the Lots within the initial thirty days of the Feasibility Period and Seller shall provide a response to Buyer prior to the last day of the Feasibility Period. Approval of Buyer's plans is a condition precedent to Buyer's obligation to close on the purchase of Lots. The Restrictions will be recorded in the appropriate public records of the county in which the Lots are located and the ACC formed after the Plat is recorded in the appropriate public records of the county in which the Lots are located but before the Initial Closing.

10.2 **HOA Documents.** Buyer understands that the Subdivision is in a Homeowners' association and will be subject to bylaws, rules and regulations and assessments of the Homeowners' association (collectively, the "***HOA Documents***"). Buyer agrees to participate in the Homeowners' association and to comply with the HOA Documents. The annual assessment is estimated to be \$150 per Lot.

10.3 **Survival.** The provisions of this Article will survive the Closings.

XI.

SIGNS, ADVERTISING, SALES TRAILER, MODEL HOME AND SPEC HOME

11.1 **Signs.** Buyer will have the right, to erect or participate in erecting community or directional signs on the Lots; provided, however, in no event will more than one (1) sign be permitted on each Lot at any time. Buyer will maintain all such signs in good condition and repair, with a neat and orderly appearance. Additionally, Seller will cause all signs owned or otherwise maintained by it or the Association advertising homes in the Subdivision to include Buyer on a no less favorable basis from Buyer's perspective than any other builder. Buyer may erect directional signs within areas of the Subdivision as approved by Seller.

11.2 **Trailer.** After the expiration of the Feasibility Period, Buyer will have the right to construct or install on a Lot owned by Buyer a sales trailer, a construction trailer or a combination sales/construction trailer to assist Buyer's marketing and construction efforts with respect to the Subdivision. The particular location of such trailers will be subject to the approval of Seller, which approval will not be unreasonably withheld,



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

delayed or conditioned.

11.3 **Model Homes.** Following the Initial Closing, Buyer will use commercially reasonable efforts to commence and complete the construction of one (1) model home on a single-family lot in Potranco Ranch Subdivision. During the term of this Agreement, Buyer will staff and keep such model open to the public during normal business hours.

11.4 **Spec Home.** Buyer agrees to use commercially reasonable efforts to maintain one (1) spec home completed or under construction in the Subdivision (with a reasonable time to start a new Spec Home after the sale of an existing spec home) during the term of this Agreement.

11.5 **Survival.** The provisions of this Article will survive the Closings and termination of this Agreement.

**XII.
CONDEMNATION**

12.1 **Eminent Domain.** If, prior to any Closing, any Lot is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by private purchase in lieu thereof, then Buyer will have the option, which must be exercised by it within twenty (20) days after its receipt of written notice from Seller advising Buyer of such taking (which notice Seller hereby agrees to give to Buyer within three (3) business days of notice thereof to Seller), (a) to proceed with the Closing only as to those Lots not affected by such taking (the determination of which will be at Buyer's reasonable discretion), in which event the Lots not purchased will be deleted from this Agreement and the Title Company will return a pro rata portion of the Earnest Money to Buyer, or (b) if any Lot or any portion thereof is so taken, to proceed with the Closing and to pay to Seller the Purchase Price for the Lots affected by such taking in exchange for the proceeds of such taking and an assignment from Seller of all future proceeds relating to such taking.

12.2 **Uniform Vendor and Buyer Risk Act.** The provisions of this Article will control and be effective notwithstanding the provisions of the Uniform Vendor and Purchaser Risk Act set forth in Section 5.007 of the Texas Property Code.

**XIII.
CONDITIONS PRECEDENT**

13.1 **Conditions.** Buyer's obligation to acquire any Lot will be conditioned upon the satisfaction (or Buyer's waiver thereof) of each of the conditions precedent set forth herein as to each Lot on which a Closing is to occur. Buyer will be entitled to waive



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

each or any of the conditions precedent insofar as the same affect any particular Lot. However, notwithstanding the fact that Buyer may exercise its right to waive each or any of such conditions precedent for any one or more of the Lots, any such waiver will not be a waiver of such conditions precedent insofar as any Lots for which Buyer has not consummated Closing are concerned. The conditions precedent are as follows:

(a) **Title.** Seller will hold fee simple title to the applicable Lots, subject only to the Permitted Encumbrances.

(b) **Development.** Seller will have caused the applicable Lots to become Complete.

(c) **Subdivision.** Seller will have caused the Subdivision to be completed in accordance with all of the laws, ordinances, regulations and codes pursuant to the Recorded Plat.

(d) **Representations.** Each of Seller's representations and warranties as set forth in this Agreement will be materially true and correct as of the date of the applicable Closing.

(e) **Title Policy.** Buyer's receipt of a title insurance policy, dated as of the close of escrow, showing title in the name of Buyer, with insurance in the amount of the purchase price, subject only to the approved exceptions.

(f) **Architectural Control Approval.** Buyers receipt of Architectural Control Committee Approval of Buyer's plans and specifications for homes to be built on the Lots.

13.2 **Buyer's Rights.** If all conditions precedent to any Closing have not been satisfied on or before the applicable Closing Date, then Buyer may, at Buyer's option exercised by written notice to Seller, (i) extend the Closing for an amount of time equal to the time it takes Seller, utilizing Seller's good faith best efforts, to satisfy such conditions precedent, not to exceed thirty (30) days, (ii) terminate this Agreement, in which event the remaining Earnest Money will be immediately returned to Buyer and thereafter neither Seller nor Buyer will have any further obligation or liability hereunder except for those obligations that survive Closing (as to any purchased Lots) or termination of this Agreement, or (iii) enforce specific performance of Seller's obligations.

**XIV.
REMEDIES**



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

14.1 **Buyer Default.** In the event Buyer should fail to consummate the transactions contemplated herein for any reason, except a permitted termination or default by Seller or the failure of Seller to satisfy any of the conditions to Buyer's obligations set forth herein, Seller may, as its sole and exclusive remedy, terminate this Agreement and the Title Company will deliver the Earnest Money to Seller and it will be and become the property of Seller, such sum being agreed upon as liquidated damages, and thereafter the neither Seller nor Buyer will have any further obligation or liability hereunder except for those obligations that survive termination of this Agreement. Except as otherwise specifically set forth in this Agreement, no other damages, right or remedies, at law or in equity, will in any case be collectible, enforceable or available to Seller other than as provided in this Section. Nothing herein will preclude Buyer from contesting Seller's declaration of Buyer's default or any rights of offset or counterclaims for Seller's default. No delay or omission in the exercise of any right or remedy accruing to Seller will impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Seller of any condition or the breach of any term, covenant or condition herein contained will not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. Seller's exercise of Seller's remedy under this Section does not release Buyer from any of Buyer's obligations under any surviving obligations for the performance of which Buyer will have full liability (even if Seller elects to terminate this Agreement), provided however Buyer in such event shall be liable only for actual damages and in no event shall Seller have the right to recover lost profits, consequential, speculative or punitive damages.

14.2 **Seller Default.** In the event that Seller should fail to consummate the transactions contemplated herein for any reason, except Buyer's default or the failure of Buyer to satisfy any of the conditions to Seller's obligations set forth herein, Buyer may, as its sole and exclusive remedy, and in addition to any rights provided elsewhere in this Agreement, either (i) enforce specific performance of this Agreement; or (ii) terminate this Agreement and receive the Earnest Money and thereafter neither Seller nor Buyer will have any further obligation or liability hereunder except for those obligations that survive termination of this Agreement. In such event, the Title Company is hereby authorized and directed to deliver the Earnest Money to Buyer. Notwithstanding the foregoing, if the remedy of specific performance is not available for any reason, then Buyer may seek any other remedy available to Buyer at law or in equity. Notwithstanding the foregoing, Buyer shall have the right to pursue its actual damages against Seller (i) for a breach of any covenant or agreement contained herein that is performable after or that survives any Closing, and (ii) for a breach of any representation or warranty. However, nothing herein will preclude Seller from contesting Buyer's declaration of Seller's default or any rights of offset or counterclaims for Buyer's default. No delay or omission in the exercise of any right or remedy will impair such right or remedy or be construed as a waiver of any such breach. The waiver by Buyer of any condition or the breach of any



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

term, covenant, or condition herein contained will not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained. Buyer's exercise of Buyer's remedies under this Section does not release Seller from any of Seller's obligations under the surviving obligations for the performance of which Seller will have full liability (even if Buyer elects to terminate this Agreement).

14.3 **Notice and Opportunity to Cure.** Prior to either Party being able to exercise any of the rights and remedies set forth in this Agreement, the non-defaulting Party will give the defaulting Party written notice of such default, and the defaulting Party will have ten (10) business days to cure such default (the "***Cure Period***").

XV.

REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 **Buyer's Representations.** To induce Seller to enter into this Agreement, Buyer represents and warrants to Seller:

(a) **Homebuilder.** Buyer is a qualified homebuilder and that the Lots are being purchased for the sole purpose of constructing single-family residences thereon.

(b) **Restricted Sale.** Buyer will not sell any of the Lots closed under this Agreement to a third party other than a homebuyer except in accordance with Article XXIII.

(c) **Interstate Land Sales Full Disclosure Act.** Buyer has represented to Seller and does represent and warrant to Seller by its execution hereof, and Seller has relied thereon, that Buyer is actively engaged in the business of constructing residential homes and purchasing Lots for the construction of a residential home thereon and that it is acquiring the Lots for the purpose of constructing a residential home thereon.

(d) **No Reliance.** Buyer further acknowledges and agrees that as to any information provided or to be provided by third parties with respect to the Subdivision, Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of any such studies or reports or any other third party information provided by Seller (however Seller has no knowledge of any inaccuracy) and that Seller has not undertaken any independent investigation as to the truth, accuracy or completeness thereof. Seller will have no liability or culpability of any nature as a result of having provided any such information to Buyer unless Seller had knowledge of the inaccuracy.



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Buyer acknowledges and agrees that, having been given the opportunity to inspect the Subdivision, Buyer is relying solely on its own investigation the Subdivision and not on any information provided or to be provided by Seller from third parties except as otherwise provided in this Agreement and the Deeds to be delivered at the Closings. Buyer agrees that Buyer will not attempt to assert any liability against Seller for furnishing such information unless Seller had knowledge of the inaccuracy. Buyer acknowledges and agrees that Buyer and Seller are in equal bargaining positions.

15.2 **Seller's Representations.** To induce Buyer to enter into this Agreement, Seller represents and warrants to, and covenants with, Buyer as follows:

(a) **Organization; Authority.** Seller is a limited liability company, lawfully organized, validly existing and in good standing under the laws of the State of Texas and is qualified to do business in the State of Texas; and (i) each has been duly authorized and empowered to enter into this Agreement and to perform fully its obligations hereunder, (ii) such obligations constitute the valid and binding obligations of Seller, enforceable in accordance with their terms, and (iii) that no further consents of any other person, entity, public body or court are required in connection with this Agreement and the performance of all obligations hereunder. The person or persons executing this Contract on behalf of Seller have full rights, title, authority, and capacity to execute and perform this Contract. Seller is not a foreign person within the meaning of Sections 7701(a) (1) and 7701(a) (5) of the Internal Revenue Code as amended.

(b) **Condemnation.** There is not pending, or to the best of Seller's knowledge, threatened, any condemnation proceeding or other litigation relating to or otherwise affecting Seller and/or any or all of the Subdivision or the Lots.

(c) **Violations.** (i) There is not pending, or to the best of Seller's knowledge, threatened, from any federal, state, city or local authority any notice, suit or judgment relating to any violation with respect to the Subdivision or the Lots; and (ii) there is no condition existing with respect to the Subdivision or the Lots that violates any statute, ordinance, law or code regarding zoning, building, fire, air pollution, or health law, or requiring any improvement, alteration, addition, correction or other work on or about the Subdivision, whether related to the Subdivision or to the activities of any owner or occupant thereof.

(d) **Environmental Conditions.** To the best of Seller's knowledge, the Subdivision including the land, surface water, ground water, and any improvements is free of Contamination (herein defined) from (A) any "*hazardous waste*," any "*hazardous substance*," and any "*oil, petroleum products, and their*



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

by-products,” as such terms are defined by any federal, state, county or local law, ordinance, regulation or requirement applicable to any portion of the Subdivision, as the same may be amended from time to time, and including any regulations promulgated thereunder, and (B) any substance the presence of which on the Subdivision is regulated or prohibited by any law (collectively, the “**Hazardous Substances**”). “**Contamination**” means the presence of Hazardous Substances at the Subdivision or arising from the Subdivision that may require remediation, removal and/or cleanup under any applicable law. Seller has not used any Hazardous Substances on, from or affecting the Subdivision in any manner that violates any applicable law, and to the best of Seller’s knowledge, no prior owner or user of the Subdivision has used such substances on, from, or affecting the Subdivision in any manner which violates any applicable law. To the best of Seller’s knowledge, there are not now, nor have there ever been, on or in the Subdivision underground storage tanks or surface impoundments, asbestos-containing materials, or any material spills of polychlorinated biphenyls, including those used in hydraulic oils, electric transformers or other equipment. Seller has no knowledge of any other environmental reports, tests or audits regarding any portion of the Subdivision existing elsewhere.

(e) **Litigation.** There is no litigation, arbitration or proceeding pending, or to the best of Seller’s knowledge, threatened, before any court or administrative agency or any other condition that relates to or affects the Subdivision or the Lots, Seller’s interest therein, Seller’s performance hereunder, Buyer’s intended use of the Lots, or which will result in a lien, charge, encumbrance or judgment against any part of or any interest in the Subdivision or the Lots.

(f) **Title.** Seller has good and indefeasible fee simple title to the Lots subject only to the Permitted Exceptions and other matters provided by this Agreement. Title to each Lot is subject to no tenancy or other right of use or occupancy which will remain in effect at or after the Closing. Seller is the fee simple owner of and is lawfully seized and possessed of the Property. There are no parties in possession of any portion of the Lots as lessees, tenants at sufferance, trespassers, or otherwise, and no third parties are entitled to, or are claiming or entitled to claim, possession of the Lots, or any part thereof, except pursuant to recorded easements that will be reflected on the plat.

(g) **Fill.** To the best of Seller’s knowledge, no landfill has occurred in the Subdivision and no debris has been buried or placed on the Subdivision except in connection with the ordinary development of the Subdivision. Seller will place no fill on any Lot, without first complying with the requirements of HUD data sheet 79G and shall place such fill in accordance with the engineered Grading Plan.

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

(h) **Flood Plain.** To the best of Seller's knowledge, no portion of the Lots is located in any flood zone, flood hazard area, flood plain or similarly designated zone on the applicable existing or pending FEMA maps or in a "*wetlands*" area as defined by the Applicable Governmental Authorities.

(i) **Zoning.** To the extent that the Subdivision is subject to any zoning ordinance or similar law, the entire Subdivision is zoned such as to permit the development and operation of a single-family residential subdivision (without the need for any special exception, variance or "*grandfathered use*") and there is no pending change in the zoning classification of the Subdivision nor, to Seller's knowledge, is any such zoning classification change threatened or contemplated.

(j) **Designations/Historic Use.** There is no actual or pending designation of all or any portion of the Subdivision, or of the area or district in which the Subdivision is located, as an historic district, site, building, battlefield, structure, object or other resource on the National Register of Historic Places or any other similar list or survey maintained by any federal, state, county, municipal or private authority such that the Subdivision or any portion thereof is or may become subject to development restrictions or prohibitions, nor does Seller have any knowledge that any such designation is contemplated.

(k) **Terrorism.** Seller is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named at any time by the United States Treasury Department as a Specially Designated National and Blocked Person or designated in Presidential Executive Order 13224 (as such order may be amended or modified) as a person who commits, threatens to commit, or supports terrorism, and Seller is not engaged in or facilitating the transactions and contemplated hereunder directly or indirectly on behalf of or for the benefit of any of the aforesaid persons, groups, entities or nations.

(l) **No Breach.** The execution and delivery of this Agreement by Seller, the execution and delivery of every other document and instrument delivered pursuant hereto by or on behalf of Seller, and the consummation of the transactions contemplated hereby does not and will not (A) constitute or result in the breach of or default under any oral or written agreement to which Seller is a party or which affects the Subdivision; (B) constitute or result in a violation of any order, decree, or injunction with respect to which the Seller and/or the Subdivision is bound; (C) cause or entitle any party to have a right to accelerate or declare a default under any oral or written agreement to which Seller is a party or which affects the Subdivision; and/or (D) violate any provision of any municipal, state or federal law, statutory or otherwise, to which Seller or the

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Subdivision is subject.

(m) **No Commitments.** Seller has not made and has no knowledge of any commitments to any authorities, school board, church or other religious body, or to any other organization, group or individual relating to the Subdivision which would impose any obligations upon Buyer to make any contributions of money or land or to install or maintain any improvements except the HOA and the Public Utility District as set forth below.

(n) **Condition of Property.** To the best of Seller's knowledge, no threatened or endangered species, or their habitats, as defined by the applicable regulatory agency, are on the Lots, and Seller has not violated nor is Seller about to violate any laws governing threatened or endangered species or their habitats. To the best of Seller's knowledge, no fault line crosses or affects the Lots that could materially or adversely affect the use of such Lots then being purchased as single-family lots. To the best of Seller's knowledge, no karst or cave features exist under any Lot or under any street abutting the Lots that could materially or adversely affect the use of such Lot or abutting street. To the best of Seller's knowledge, no portion of the Subdivision is or has been used as a cemetery or graveyard. To the best of Seller's knowledge, there are no archaeological, anthropological, or historical finds, objects, or sites in, on, or about the Subdivision.

(o) **Notices.** To the best of Seller's knowledge, no uncured notices exist of violations of any laws, rules, ordinances, or restrictive covenants regarding the Lots or the Subdivision.

(p) **No Contracts.** Seller has not entered into any other contracts, agreements or understandings, verbal or written, for the sale or transfer of any portion of the Lots. Between the Effective Date and each Closing hereunder, no part of the Lots will be alienated, encumbered or transferred except as contemplated by this Agreement. Notwithstanding the foregoing, Buyer may enter into a contract with another builder (the "Third Party Builder") on no more favorable terms than as contained in this Agreement and during the Feasibility Period, Seller may accept "back-up contracts." However, any such "back-up contracts" shall terminate and be of no further force or effect upon the expiration of Buyer's Feasibility Period or Buyer's written election to waive all or part of the Feasibility Period, whichever first occurs.

(q) **Bankruptcy.** There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

under any other debtor relief laws contemplated by or pending against Seller or the Lots.

(r) **No Legal Bar.** Seller has received no notice, and otherwise has no knowledge, of the existence of any governmental proceedings, court order, deed restriction or restrictive covenant or other public or private limitation that could materially, adversely affect the immediate use of the Lots as single-family residential lots or otherwise prevent or materially delay the commencement of construction of single family residences thereon.

(s) **Full and Free Access.** Each Lot has full and free access to and from public highways, streets or roads, and to the best of Seller's knowledge, there is no pending or threatened action that would result in the termination or impairment of such access. Seller will not take or permit any action that would result in any such termination or impairment of access.

(t) **Restrictions.** Seller will not modify the Restrictions, except with Buyer's written consent.

(u) **Iron Pins.** All of the corners of the Lots have been staked with iron pins.

(v) **Water Impact Fees and Sewer Reservation Fees.** Seller has prepaid the water impact fees and sewer reservation fees associated with the Lots conveyed to Buyer. The water purveyor is the Yancey Water Company and the pre-paid water impact fee for each Lot in the Property is \$3,700.00. The Sewer Company is Forest Glen Utility Company, Inc. and the pre-paid sewer reservation fee for each Lot in the Property is \$2,465.00, which are included in the Purchase Price of the Lots. Buyer will pay for the utility connection, subsequent user or tap fees and/or deposits, and any other governmental fees associated with ownership of the Lots after Closing (including builder permits, driveway permits, meter and inspection fees).

(w) **Lot Width.** All Lots will be not less than one hundred twenty (120) feet in width at the front set back line.

15.3 **Breach of Seller's Representations and Warranties.** If any of Seller's warranties or representations above are discovered by Buyer, on or prior to the date of a Closing, to be misrepresented or inaccurate, Buyer will notify Seller promptly in writing, and Seller will have the opportunity to correct or remedy such misrepresentation or inaccuracy. Seller will notify Buyer in writing immediately if a representation becomes untrue or misleading in any material respect in light of information obtained by Seller



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

after the Effective Date. If such misrepresentation or inaccuracy is not remedied by Seller prior to such Closing, Buyer may, upon written notice to Seller and as Buyer's sole and exclusive remedy either (1) terminate this Agreement and the Earnest Money then on deposit will be promptly refunded by Title Company to Buyer, and thereafter the Parties will have no further obligation or liability hereunder except as otherwise expressly provided in this Agreement, or (2) proceed to the applicable Closing and thereby waiving any claim for breach of warranty or misrepresentation with respect to such misrepresentation or inaccuracy as to the affected Lots only. If Buyer does not disclose to Seller any of Seller's warranties or representations that are discovered by Buyer on or prior to the date of a Closing to be misrepresented or inaccurate and Buyer proceeds to such Closing, Buyer will be deemed to have waived any claim for breach of warranty or misrepresentation with respect to such misrepresentation or inaccuracy for that Closing and the Lots purchased at that Closing.

15.4 Survival. All representations, warranties and covenants of Seller contained in this Agreement will be true as of the Effective Date and the date of the applicable Closing and will survive each Closing for a period of two (2) years from the date of each such Closing, and no action will be brought, claim made, or defense raised based on a breach of or inaccuracy in any such representations, warranties, and covenants at any time after two (2) years and one (1) month from the date each such Closing.

**XVI.
PURCHASE PRICE TO OTHER PURCHASERS**

Seller agrees, as a covenant that will survive all Closings, for a period of time concluding on the date this Agreement is terminated or the date on which Buyer has acquired all of the Lots hereunder, whichever date shall occur first, that Seller will not sell any lots in the Subdivision to any third party (i) at a price less than the purchase price per Lot specified in this Agreement commencing on the Initial Closing Date ("**Price Deviation**"); (ii) on a closing/take down schedule substantially less aggressive than the Takedown Schedule specified in this Agreement ("**Schedule Deviation**"); or (iii) with lesser Earnest Money than the Earnest Money specified in this Agreement ("**Earnest Money Deviation**"); and if Seller does so, Seller shall provide Buyer with written notice of same, and at Buyer's option, those same terms will then be incorporated herein as of the Effective Date. If a Price Deviation occurs then any difference in price will be credited against the purchase price due at the next scheduled Closing. If a Schedule Deviation occurs then any closing/take down difference will be adjusted at the next scheduled Closing. If Seller conveys lots in the Subdivision on a more favorable lot takedown schedule than the schedule set forth herein, then the take down schedule in this Agreement will be deemed to have been automatically revised to meet the more favorable takedown schedule. Prior to each Closing and at the request of Buyer, Seller will provide Buyer written evidence that the lot prices in prior conveyances



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

in the Subdivision are not lower than the price set forth herein.

**XVII.
MERGER**

All warranties, representations, covenants, obligations and agreements of Seller and Buyer contained in this Agreement will not merge into the documents and instruments executed at the Closings and will survive the Closings unless otherwise expressly provided herein.

**XVIII.
NOTICES**

18.1 **Delivery Instructions.** Any notice, request, demand, instruction or other communication to be given to either Party hereunder, except those required to be delivered at the Closings, will be in writing and will be deemed to be given upon receipt, if hand delivered or delivered by express delivery service, or upon deposit of such notice in registered or certified mail, return receipt requested, facsimile, or email addressed as follows:

To Seller:	Mr. Bart Swider Lawland Group, LLC 15303 Huebner Road, Bldg. 15, San Antonio TX 78248 Telephone: 210-225-1500 Telecopy: 210-229-9100
With copies to:	Mr. Harry Hausman Potranco 320, LLC 14855 Blanco Road, Suite 203, San Antonio TX 78216 Telephone: 210-372-0092 Telecopy: 210-372-0738
To Buyer:	Mr. Ed Berlanga McMillin Texas Development, LLC 21232 Gathering Oak, Suite 107 San Antonio TX 78216 Telephone: (210) 490-1798 Facsimile: (210) 499-4635
With copies to:	Mr. Guy Asaro



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

President
McMillin Homes
P.O. Box 85104
San Diego CA 92186-5104
Telephone: (619)794-1311
Facsimile: (619) 336-3093

Gary W. Javore
Johnson, Christopher, Javore & Cochran, Inc.
5802 IH 10 West
San Antonio, Texas 78201
Telephone: (210) 733-6235
Facsimile: (210) 733-0374

18.2 **Change of Address.** The addresses and addressees, for the purpose of this Article, may be changed by either Party by giving notice of such change to the other Party in the manner provided herein for giving notice. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last address and addressee stated herein will be deemed to continue in effect for all purposes.

**XIX.
ENTIRE AGREEMENT; ATTORNEYS' FEES**

This Agreement and the exhibits attached hereto contain the entire agreement between the Parties, and no promise, representation, warranty or covenant not included in this Agreement or any such referenced agreements has been or is relied upon or made by either Party. Each Party has relied upon its own examination of the full Agreement and the provisions thereof, the counsel of its own advisors, and the warranties, representations and covenants expressly contained in this Agreement. No modification or amendment of this Agreement will be of any force or effect unless made in writing and executed by both Buyer and Seller. In the event that any litigation arises hereunder, it is specifically stipulated that this Agreement will be interpreted and construed according to the laws of the State of Texas, and will be performable in Medina County, Texas. Further, the prevailing Party in any litigation between the Parties will be entitled to recover reasonable attorneys' fees, court costs and expenses. The provisions of this Article will survive the Closings.

**XX.
BUYER'S OBLIGATIONS**

20.1 **Buyer Obligations.** Buyer will use good faith efforts to fulfill the



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

obligations set forth below:

(a) **Utilities.** Buyer will pay any utility deposit, including any connection, tap or inspection fee, for water electrical, telephone, cable television, or other utility service for the Lot or any part thereof and any costs or charges for meters for utility service to a Lot, but expressly excluding Prepaid Impact Fees. Buyer acknowledges and agrees that it is the responsibility of Buyer to deal directly with the utility companies for the utility services required by Buyer. Seller will cooperate with Buyer, at no cost or expense to Seller, in dealing with said utility companies.

(b) **Maintenance.** Buyer will maintain the Lots owned by Buyer including the area in front of the Lots owned by Buyer in an attractive condition which will include mowing and weeding as necessary and removing any runoff (mud or otherwise) on the street in front of the Lots owned by Buyer. If Buyer fails to comply with its obligations set forth in the preceding sentence and fails to cure such non-compliance within thirty (30) days following receipt of written notice from Seller, then Seller will have the right to perform such work and invoice Buyer for the cost thereof as provided below.

(c) **Repair.** Buyer will promptly repair any and all damage caused by Buyer, Buyer's employees, agents, contractors, and subcontractors to any streets or common areas that are shown on the Recorded Plat. If Buyer fails to comply with its obligations set forth in the preceding sentence and fails to cure such non-compliance within thirty (30) days (or commence curing if such non-compliance cannot reasonably be cured within thirty (30) days) following receipt of written notice from Seller, then Seller will have the right to perform such work and invoice Buyer for the cost thereof as provided below.

(d) **Seller Entry.** Buyer acknowledges that subsequent to the Closing of a Lot and prior to the earlier to occur of (i) date of final completion of all work on the Lots, or (ii) the date that the Buyer sells the Lot, Seller may and will have the right to enter upon the Lot in order to complete the development of the Subdivision, Lots, and the installation of the improvements thereon, and that in connection therewith, Buyer's access to and use of the Lots may be temporarily limited and/or impeded, however, Seller will take reasonable steps to minimize such impediment to use or access. Buyer hereby releases Seller from any claims, liabilities, damages, costs, expenses, and causes of action resulting from Buyer's temporary lack of access to or use of such Lots subsequent to the closing thereof as a result of any such entry thereon by Seller, or its agents, employees, contractors, or subcontractors, provided that such entry is reasonable and necessary under the circumstances.

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

(e) **Grading.** After Closing, Buyer is responsible for grading the Lots in accordance with the approved grading plan (if applicable) for the Subdivision. Buyer is to perform all grading and construction activities on the Lots in conformity with the drainage plan prepared by Seller's project engineer unless a variance is granted by Seller. If Buyer fails to comply with its obligations set forth in this subsection and fails to cure such non-compliance within thirty (30) days (or commence curing if such non-compliance cannot reasonably be cured within thirty (30) days) following receipt of written notice from Seller, then Buyer will be in default. Buyer agrees (i) to file its own Notice of Intent, and (ii) to comply with the SWPPP as to any Lot purchased by Buyer from and after date of Closing of such Lot.

(f) **Construction Prior to Closing.** Except for construction related to the installation of sales and construction trailers, Buyer will not commence construction of any kind on a Lot, including, without limitation, grading, clearing or the construction of batter boards, prior to the Closing of such Lot. In the event any such construction is commenced, Seller will be entitled to enforce specific performance of Buyer's obligation to purchase the Lots on which Buyer has commenced construction (whether or not specific performance is otherwise a remedy available to Seller under this Agreement).

(g) **Drainage.** After Closing, Buyer will be solely responsible for (A) balancing and leveling the Lots, (B) controlling the internal flow and direction of storm water within such Lots, (C) complying with all federal, state, city, county, and local laws, codes, rules, regulations and requirements applicable to such Lots and relating to environmental and ecological use and condition of such Lots and the construction by Buyer thereon, including, without limitation, all storm water permitting requirements under the Texas Water Code and/or which may be imposed by the TCEQ, (D) compliance with, and preventing alterations and deviations from, the drainage plan applicable to the Subdivision and such Lots, and (E) applying for and obtaining all necessary permits for construction of any improvements on any Lot. Notwithstanding anything herein to the contrary, Buyer will be excused from strictly following the drainage plan, if Buyer can demonstrate that the drainage plan is defective or would be cost prohibitive to implement.

(h) **Water Re-use.** Buyer will offer Water Re-use service for landscape irrigation in homes it constructs.

(i) **Trash Bin.** Buyer will maintain a trash bin on each Lot where construction of a home has started which will be emptied on a regular basis. If



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Buyer fails to comply with its obligations set forth in the preceding sentence, then Seller will have the right to perform such work and invoice Buyer for the cost thereof as provided below.

(j) **Compliance.** Buyer will comply with all applicable laws in the construction of houses and other activities on the Lots and in the Subdivision

(k) **ACC.** Buyer will submit final drawings and detail specifications to the ACC for approval as provided in the Restrictions. During the Feasibility Period and as soon as reasonably practical for Buyer after the Effective Date, Buyer will submit to Seller for Seller's written approval (and, if applicable, for Seller to obtain written approval by the required ACC or design review committee of the HOA, in compliance with the Restrictions) the elevations and plans for the houses or models of houses which Buyer intends to build on the Lots (the "***Plans***"). Seller will provide approval of all such Plans by the earlier of (i) within fifteen (15) days after Buyer submits such elevations and plans; or (ii) prior to the expiration of the Feasibility Period. It is acknowledged that the Plans will be comprised of a master set of plans covering all of the different homes to be constructed by Buyer upon the Lots. Upon the approval of the master set of Plans Buyer will not be required to resubmit a particular approved plan prior to the time that a home conforming to such plan is to be constructed. Buyer's original master set of Plans will not be subject to any review charges; however, Buyer acknowledges that a new plan not approved in the original mix of Plans must be submitted for approval prior to the time that the first home conforming to such plan is to be constructed and that Buyer will be subject to any plan review charges established by the ACC. As with the master set of Plans, once a new plan not part of the original master set of Plans is approved by the ACC, Buyer will not be required to resubmit that plan at the time subsequent homes conforming to such plan are constructed. Buyer will submit to the ACC a plot plan showing the location of the house on the Lot and improvements to be built on the Lot and will not be responsible for any further plan review fees or charges associated with such plan. If not objected to within ten (10) days, the plot plan shall be deemed accepted.

(l) **Gas Service.** Provided that Seller provides the Subdivision with an internal gas distribution system, Buyer will plumb all homes for gas service and shall offer to home buyers as standard appliances, gas cook tops/ranges, and gas water heaters.

(m) **Notice.** Not later than the date which is ten (10) days prior to the Initial Closing, and at least ten (10) days in advance of each subsequent Closing, Buyer will give Seller written notice specifying the particular Lots to be acquired at the applicable Closing and any financing involved.



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

(n) **Permits.** Buyer will (i) file a Notice of Intent with the Texas Commission on Environmental Quality or other applicable governmental authority regarding the Lots Buyer purchases, and (ii) comply with the SWPPP as to any Lot purchased by Buyer from and after the Closing of such Lot.

(o) **Hold Harmless.** Buyer will indemnify Seller and hold Seller harmless from and against any and all claims, demands, liabilities, obligations, damages, actions, causes of action, losses, costs and expenses (including, without limitation, reasonable attorneys' fees, associated legal expenses and court costs) relating to or arising out of Buyer's failure to comply with its obligations under this Article XX. Further, in the event Buyer fails to comply with the provisions of this Article, Seller may, but will not be obligated to, enter upon the Lots and adjacent streets, and perform the obligations of Buyer hereunder if Buyer fails to commence the work within thirty (30) business days after written notice from Seller to Buyer and to diligently complete it thereafter.

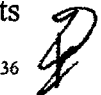
(p) **Survival.** All of the obligations of Buyer under this Article, and, as applicable, Seller's rights in respect thereof, will survive and be enforceable for a period of one (1) years following each applicable Closing.

**XXI.
DISCLOSURES**

21.1 **Disclosures.** Seller hereby makes the following disclosures to Buyer:

(a) **Additional Tax Liability.** If for the current ad valorem tax year the taxable value of the land that is the subject of this Agreement is determined by a special appraisal method that allows for appraisal of the Subdivision at less than its market value, the person to whom the Subdivision is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the Subdivision may then be appraised at its full market value. In addition, the transfer of the Subdivision or a subsequent change in the use of the Subdivision may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the Subdivision ("Rollback taxes"). The taxable value of the Subdivision and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the Lots are located. Seller will be responsible for all Rollback taxes.

(b) **Mandatory Association.** As a purchaser of property in the residential community in which the Lots are located, you are obligated to be a member of a mandatory homeowners' association. Restrictive covenants



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

governing the use and occupancy of the Lots and a dedicatory instrument governing the establishment, maintenance and operation of this residential community have been or will be recorded in the appropriate public records of the county in which the Lots are located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the homeowners' association. The amount of the assessment is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Lots. Buyer acknowledges that copies of the bylaws for the homeowners' association, covenants, conditions and restrictions applicable to the Lots and rules and regulations of the association have been made available.

(c) **Annexation.** If the Subdivision that is the subject of this Agreement is located outside the limits of a municipality, the Subdivision may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Subdivision is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Subdivision for further information.

(d) **Special Utility District.** If the Lots are situated within a utility district or flood control district subject to the provisions of Section 49.452 of the Texas Water Code, then Seller will give to Buyer the required written notice and Buyer agrees to acknowledge receipt of the notice in writing. The notice will set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and will comply with all other applicable requirements of the Texas Water Code.

(e) **Abstract Or Title Policy.** Seller advises Buyer to have an abstract of title covering the Lots examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy. If a title commitment is furnished, the title commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(f) **Public Improvement District ("PID").** Pursuant to the provisions of §5.014 of the Texas Property Code:

NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT
ASSESSMENT TO (municipality or county levying assessment) CONCERNING
THE PROPERTY AT POTRANCO RANCH SUBDIVISION.

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment is for the purpose of maintaining the private wastewater treatment system, the private water re-use system, streets and drainage system, common areas and entry of the community. The assessment may be due annually or in periodic installments. The assessment shall be \$.18 per \$100 dollars of valuation. Due dates of that assessment may be obtained from the municipality or county levying the assessment.

(g) The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property. Seller intends to use Tax Increment Financing to reimburse the PID for infrastructure improvements

**XXII.
RIGHT OF FIRST REFUSAL FOR BUYER**

22.1 **Notice of Offer.** Seller will not sell or market to, or accept an offer to purchase from, any third party, any property in Future Phase(s) prior to the sixth Closing hereunder. If at any time after the fourth Closing, Seller will desire to offer to sell all or any portion of the lots in Future Phase(s) to any party (an "*Offer*"), Seller will send Buyer two (2) copies of a contract, substantially in the same form and substance as this Agreement, for the sale of the lots within Future Phase(s) embodying the terms of the Offer. Buyer will have the right, within thirty (30) days after the receipt of the contract and written notice, to agree to purchase the lots within Future Phase(s) or such part thereof on the terms and conditions set forth in the Offer. If Buyer elects to accept the Offer embodied in the contract, then Buyer must do so by executing one copy of the contract or letter of intent and returning it to Seller within the thirty (30) day period. The contract for the lots within Future Phase(s) shall contain a Right of First Refusal similar to this Section.

22.2 **Open Period.** If Buyer does not accept the Offer within the thirty (30) day period provided in Section 22.1, then the Offer will be deemed withdrawn and Seller will be free for a period of six (6) months from the expiration of the thirty (30) business day period to sell or offer to sell Future Phase(s) or such part thereof to third parties on terms that are not more favorable from the Buyer's perspective than those set forth in the Offer, free and clear of Buyer's right of first refusal contained herein. If Seller desires to sell the lots in Future Phase(s) or such part thereof on terms less favorable to Seller than the Offer (lesser purchase price than contained in the Offer, or a less aggressive take-down schedule, or fewer Lots, or less Earnest Money), then the Offer shall be modified to include such lesser terms and submitted to Buyer in accordance with the provisions of

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Subsection 22.1 hereof as though it were a new offer. If the sale of the lots in Future Phase(s) or such part thereof is not completed and closed within such six (6) month period in accordance with the parameters set forth in the preceding sentence, then any further offer to sell or purchase lots in the Future Phase(s) or any part thereof, must first be submitted to Buyer in accordance with the provisions of Section 22.1 hereof.

22.3 **Term.** This Article will survive the closing of the Lots and remain in effect until all of the Lots in the Future Phase(s) have been sold.

22.4 **Survival.** This Section will survive each Closing and the termination of this Agreement. Additionally, Buyer will be entitled to record a memorandum in the appropriate public records of the county in which the Lots are located, with respect to Buyer's rights under this Article.

22.5 **Legal Description.** Inasmuch as the a final plat of the Future Phase(s) is yet to be recorded, Seller and Buyer acknowledge that the lot and block legal description for the lots in the Future Phase(s) technically may be legally insufficient for the purpose of supporting an action for enforcement of the right of first refusal set forth in this Article. Because the Parties desire to provide for the right of enforcement, Seller and Buyer agree that (i) they are experienced in transactions of this nature, (ii) each Party waives any and all claims of an insufficient legal description, including, but not limited to, any and all claims under the Statute of Frauds, and (iii) upon completion of, and recordation of, a final plat of the Future Phase(s), this Agreement will be amended to incorporate the legal description of the lots in the Future Phase(s) as finally subdivided.

**XXIII.
RIGHT OF FIRST REFUSAL FOR SELLER**

If, at any time after purchase of one or more Lots, Buyer offers to sell or receives a bona fide offer from a third party to buy any or all of such Lots prior to the construction of a residential home thereon or execution of a contract for the construction of a home thereon, Buyer will promptly give written notice to Seller of the terms of the offer made or received and Buyer's willingness to sell for that price and on those terms. Upon receiving the notice, Seller may exercise the right, in the manner specified below, to purchase the Lots described in the offer at the stated price and on the stated terms. If Seller elects to accept Buyer's offer or meet the third party's offer, Seller must notify Buyer of that election, doing so in writing delivered to Buyer within ten (10) business days after the date of Buyer's notice to Seller of the offer. In the event that Seller elects to accept the offer embodied in the contract, Seller will do so by executing an identical contract, substituting only Seller as the Buyer thereunder, and returning it to the Buyer within the ten (10) business day period. If Seller elects to refuse or not meet the third party offer, Seller need take no action whatsoever. Further, if Seller fails to deliver Buyer a



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

notice of Seller's election to accept within the time required for such notice, Seller will be deemed to have refused the offer to sell or the right to meet the offer to purchase. If Seller elects to refuse or is deemed to have refused the offer, Buyer is free to sell or accept the offer. If for any reason any Lots are not sold by Buyer following an offer from a third party, the right of first refusal will continue in full force and effect on the same terms and conditions. Further, in the event that any offer is for less than all of the Lots, the right of first refusal will continue in full force and effect with respect to any remaining Lots. This right of first refusal will be binding on Buyer, its successors and assigns, and a memorandum of this right of first refusal may be recorded in the real property records at the time of the Initial Closing, and supplemented at the time of each Subsequent Closing. Seller's right of first refusal under this Article will automatically terminate and expire as to each Lot on the date that Buyer has commenced construction (by completing the setting of forms for the pouring of the foundation) of a single-family residential home on the Lot, and any memorandum of Seller's right of first refusal recorded in the real property records will contain such termination and expiration provision.

**XXIV.
MISCELLANEOUS**

24.1 **Multiple Counterparts; Headings.** This Agreement may be executed in any number of counterparts, including, without limitation, facsimile and electronically scanned counterparts, which together will constitute the agreement of the Parties. The article headings herein contained are for purposes of identification only and will not be considered in construing this Agreement.

24.2 **Time of the Essence.** Time is of the essence with respect to the performance of all obligations provided herein and the consummation of all transactions contemplated hereby.

24.3 **Assignment.** Buyer will not assign this Agreement without first obtaining Seller's written permission to assign this Agreement; provided, however, Buyer may assign this Agreement to any entity owned, controlled, or under the common control of Buyer without Seller's prior consent. Seller shall not assign this Agreement or its rights hereunder to any person or entity other than as a collateral assignment to a lender who is providing development financing secured by the Property without Buyer's prior written consent.

24.4 **Calculation of Time Periods.** If any date herein set forth for the performance of any obligation by Seller or Buyer or for the delivery of any instrument or notice herein provided should be on a Saturday, Sunday, or legal holiday, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "*legal*"



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the county in which the Lots are located, for observance thereof. Any and all references in this Agreement to time periods which are specified by reference to a certain number of days refer to calendar days, unless "business days" is otherwise expressly provided.

24.5 **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable, and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be deemed added automatically as a part of this Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and as may be legal, valid and enforceable.

24.6 **Parties Bound.** This Agreement and the terms and provisions hereof will inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns whenever the context so requires or admits. No third party will have any rights, claims, benefits or obligations accruing hereunder, unless such third party is claiming same by virtue of rights or interests obtained from Buyer or Seller in accordance with the preceding sentence.

24.7 **Seller is Not a Foreign Person.** Seller hereby represents to Buyer that it is not a foreign person, corporation, partnership, trust or estate (as those terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated and in force with respect thereto) and Seller will, at each Closing, deliver to Buyer a certificate confirming such representation in form conforming to the requirements of applicable law or regulations.

24.8 **WAIVER OF JURY TRIAL; LIMITATION OF DAMAGES.**

(a) **SELLER AND BUYER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR THE SUBDIVISION. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY SELLER AND BUYER. SELLER AND BUYER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.**



SELLER AND BUYER FURTHER REPRESENT THAT THEY HAVE BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

(b) THE PARTIES HERETO HEREBY WAIVE ANY RIGHT TO SEEK OR RECOVER IN CONNECTION WITH ANY DISPUTE OR CONTROVERSY ARISING OUT OF THIS AGREEMENT ANY SPECULATIVE, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES (INCLUDING EXEMPLARY DAMAGES, TREBLE DAMAGES OR ANY OTHER PENALTY OR PUNITIVE TYPE OF DAMAGES), REGARDLESS OF WHETHER SUCH DAMAGES MAY BE AVAILABLE UNDER THE LAWS OF TEXAS.

(c) THE PROVISIONS OF THIS SECTION WILL SURVIVE EACH CLOSING.

24.9 **Arbitration.** The Parties agree that except for equitable remedies (including specific performance), which Buyer may pursue in court, all disputes hereunder will be settled by binding arbitration conducted by a neutral arbitrator selected by the American Arbitration Association or other third party arbitration organization agreed upon by the Parties at the arbitrator's offices closest to the Subdivision. The arbitration will be conducted according to the Texas Arbitration Act and the American Arbitration Association Construction Industry Arbitration Rules or such other procedures as may be agreed upon by the Parties. To the extent that it has the legal right and authority to do so and recognizing that, in the case of clause (ii) below, different arbitration rules may apply, each Party agrees to (i) join into the arbitration proceeding hereunder or (ii) join any other arbitration proceeding being conducted by persons or entities related to the dispute that may be necessary to completely resolve the dispute, such as a home purchaser, or Seller's contractors, subcontractors or materialmen. The arbitration will determine all rights and obligations under this Agreement and the award of the arbitrator will be final, binding and enforceable. Either Party may, within one year after an arbitration award, apply to any court of competent jurisdiction to confirm the award. The forwarding of a written demand for arbitration will toll the running of any applicable statute of limitations for the matter to be arbitrated. This agreement to arbitrate will survive the Closing of the Lots.

24.10 **Force Majeure.** In the event Seller or Buyer will be delayed or hindered or prevented from the performance of any obligation required under this Agreement by



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

reason of strikes, lockouts, inability to procure labor or materials, fire or other casualty, acts of God, riots, insurrection, war or any other reason not within the reasonable control of Seller or Buyer, as the case may be, then the performance of such obligation will be excused for a period of such delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay.

24.11 **No Partnership.** Nothing in this Agreement will be deemed in any way to create between the Parties any relationship of partnership, joint venture or association, and the Parties disclaim any existence thereof.

24.12 **Joint Drafting.** This Agreement and the Exhibits have been jointly drafted, negotiated and agreed upon by Seller and Buyer. Any rule of contract interpretation that provides that ambiguity will be construed against the drafting Party is inapplicable to this Agreement and the Exhibits and will not be used in connection with the interpretation of this Agreement or the Exhibits.

24.13 **Exhibits.** Any exhibit not available at the time this Agreement is executed will be agreed upon, initialed and attached by the Parties as soon after execution as is practicable, but failure to attach any exhibit will not affect the validity of this Agreement unless the Parties are in material disagreement as to the contents of such exhibit.

24.14 **Casualty Loss.** All risk of loss to the Lots will remain upon Seller prior to the Closings. If, prior to the Closings, any of the Lots is damaged or destroyed by any casualty, Buyer may, at its option, either (i) terminate this Agreement by written notice to Seller with respect to the affected Lots, in which event Buyer will receive a pro rata return of the Earnest Money then on deposit for such affected Lots; or (ii) close the acquisition of the damaged Lots as provided herein.

24.15 **Applicable Governmental Authorities.** The term “*Applicable Governmental Authorities*” will mean all federal, state and local governmental and quasi-governmental agencies, bodies, entities, boards and authorities that have jurisdiction over the Subdivision, the furnishing of utilities or other services to the Subdivision, improvement, development, occupancy, sale or use of the Subdivision.

24.16 **Effective Date.** The term “*Effective Date*” will mean the date on which the Title Company executes and acknowledges receipt of a fully executed copy of this Agreement.

24.17 **Survival of Indemnity Obligations.** Any obligation set forth in this Agreement of either Party to indemnify the other Party will survive each Closing and termination of this Agreement.



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

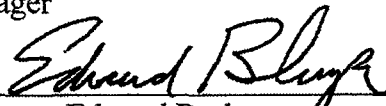
24.18 **Good Faith and Fair Dealing; Further Assurances.** Seller and Buyer will cooperate and deal with one another fairly and in good faith at all times in the performance of all terms and conditions of this Agreement. Further, Seller and Buyer will perform such reasonable acts, execute such reasonable documents, instruments and certificates, and undertake such further reasonable assurances, all as may be reasonably necessary so to effectuate the purposes and intent of this Agreement.

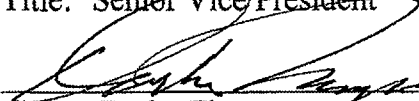
EXECUTED the 30 day of March, 2012.

BUYER:

MCMILLIN TEXAS DEVELOPMENT, LLC,
a Texas limited liability company

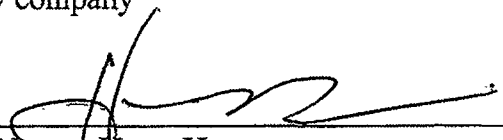
By: McMillin Texas Management Services, LLC,
a Texas limited liability company,
Its: Manager

By: 
Name: Edward Berlanga
Title: Senior Vice President

By: 
Name: Drake Thompson
Title: Vice President

SELLER:

320 POTRANCO RANCH, LLC, a Texas limited
liability company

By: 
Name: Harry Hausman
Title:



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

SCHEDULE OF EXHIBITS

Exhibit "A"	-Depiction of Lots
Exhibit "B"	-Metes and Bounds Description of Parent Tract
Exhibit "C"	-Preliminary Plat for Unit 1
Exhibit "C-1"-	-Depiction of one Hundred Five (105) Lots in Units 1-3
Exhibit "D"	-Depiction of Future Phase(s)
Exhibit "E"	-Warranty Deed
Exhibit "F"	-Completion Certificate



ATTACHMENT 1-14
DEVELOPER AGREEMENT

Title Company Receipt of Agreement

The undersigned Title Company hereby acknowledges receipt of this Agreement
on the 9 day of April, 2012.

TITLE COMPANY:

First American Title Company

By:

Name:

Title:

Rita Desseffe

Escrow Officer

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Title Company Receipt of Initial Earnest Money

The undersigned Title Company hereby acknowledges receipt of the Initial Earnest Money on the ____ day of March, 2012, and agrees to hold and dispose of the Initial Earnest Money in accordance with the provisions of this Agreement.

TITLE COMPANY:

First American Title Company

By: _____
Name: _____
Title: _____

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

Title Company Receipt of Additional Earnest Money

The undersigned Title Company hereby acknowledges receipt of the Additional Earnest Money on the ____ day of May, 2012, and agrees to hold and dispose of the Additional Earnest Money in accordance with the provisions of this Agreement.

TITLE COMPANY:

First American Title Company

By: _____
Name: _____
Title: _____

EXHIBIT "A"

TO

AGREEMENT OF SALE AND PURCHASE AGREEMENT

Depiction of Lots

52 or 53 Lots consisting of:

1. 17 or 18 Lots in Unit 1 depending on lot split
2. 17 Lots in Unit 2
3. 18 Lots in Unit 3

* Buyer and Seller agree and acknowledge that the specific Lots to be purchased by Buyer under this Agreement are to be agreed upon by Buyer, TPB and Seller as set forth in Section 4.11

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

EXHIBIT "B"

TO

AGREEMENT OF SALE AND PURCHASE AGREEMENT

Metes and Bounds Description of Parent Tract

[TO BE ATTACHED]

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

**EXHIBIT 13
320.15 ACRES**

**STATE OF TEXAS
COUNTY OF MEDINA**

Field notes for a 320.15 acre tract of land in Medina County, Texas and being out of the following Surveys with their approximate acreage.

59.65 acres out of Survey Number 97, Abstract 1452;
142.49 acres out of Survey Number 96, Abstract 1327 and
118.01 acres out of Survey Number 38, Abstract 5 all in Medina County, Texas.

Said 320.15 acre tract of land being the same land as described in a deed from Ruth Steinle Ausburn to Protranco Ranch, LP, recorded in Volume 573, Page 741 of the Official Public Records of Medina County, Texas. Said 320.15 acre tract of land being more particularly described by metes and bounds as follows.

BEGINNING at a 5/8 inch steel pin found on the south Right-Of-Way line of FM Hwy 1957 (variable width 80' min) for the northwest corner of this tract and being the northwest corner of a called 320.00 acre tract as described in a deed from Ruth Steinle Ausburn to Protranco Ranch, LP, recorded in Volume 573, Page 741 of the Official Public Records of Medina County, Texas. Said point being the northwest corner of a called 619.4125 acre tract (VI Second Tract) from Marina R. Steinele to Jeanene Steinle Williams in a Last Will and Testament, recorded in Volume 63, Page 378 of the Official Public Records of Medina County, Texas. Said point also being the northeast corner of a called 722.7286 acre tract (VII Second Tract) from Marina R. Steinele to Ruth Steinle in a Last Will and Testament, recorded in Volume 63, Page 378 of the Official Public Records of Medina County, Texas.

THENCE along the South Right-Of-Way line of FM Hwy 1957 the following four calls; North 86° 32' 48" East, a distance of 126.51 feet to a Txdot Brass Disk found for an angle point; South 82° 51' 59" East, a distance of 331.58 feet to a Txdot Brass Disk found for an angle point; North 66° 51' 45" East, a distance of 176.50 feet to a Txdot Brass disk found for an angle point and North 86° 45' 28" East, a distance of 1735.16 feet to a Steel fence post found for the northeast corner of the herein described 320.15 acre tract.

THENCE cutting across the aforesaid 722.7286 acre tract, South 00° 08' 33" West, a distance of 6018.96 feet to a 5/8 inch steel pin found for the southeast corner of the herein described 320.15 acre tract and being on the north line of a called 264.583 acre tract as described in a deed from Sharon Alice Manire to Linda Searson, recorded in Volume 93, Page 445 of the Official Public Records of Medina County, Texas.

THENCE with the south line of this tract the following three calls; South 89° 34' 06" West, a distance of 48.09 feet to a Cedar post found for an angle point; North 89° 30' 41" West, a distance of 875.53 feet to a steel pipe post found between two gates for an angle point and North 89° 16' 19" West, a distance of 1426.42 feet to a Fence Corner Post found for the southwest corner of the herein described 320.15 acre tract and being the southeast corner of the aforesaid 619.4125 acre tract.

THENCE with the west line of this tract, North 00° 08' 55" East, a distance of 5858.20 feet to the place of the **BEGINNING**.

I, Jerry D. Wilkie, Jr., hereby certify that these field notes were prepared from an actual survey made on the ground on August 29, 2011.

Bearing based on Geodetic Observation taken at the time of the survey and tied into the Leica Coors Network.

Reference is hereby made to an 11" x 17" Survey Drawing that accompanies these Field Notes.

Jerry D. Wilkie, Jr.
Jerry D. Wilkie, Jr.
Registered Professional
Land Surveyor No. 4724
Job Number 2011195



**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

EXHIBIT "C"

TO

AGREEMENT OF SALE AND PURCHASE AGREEMENT

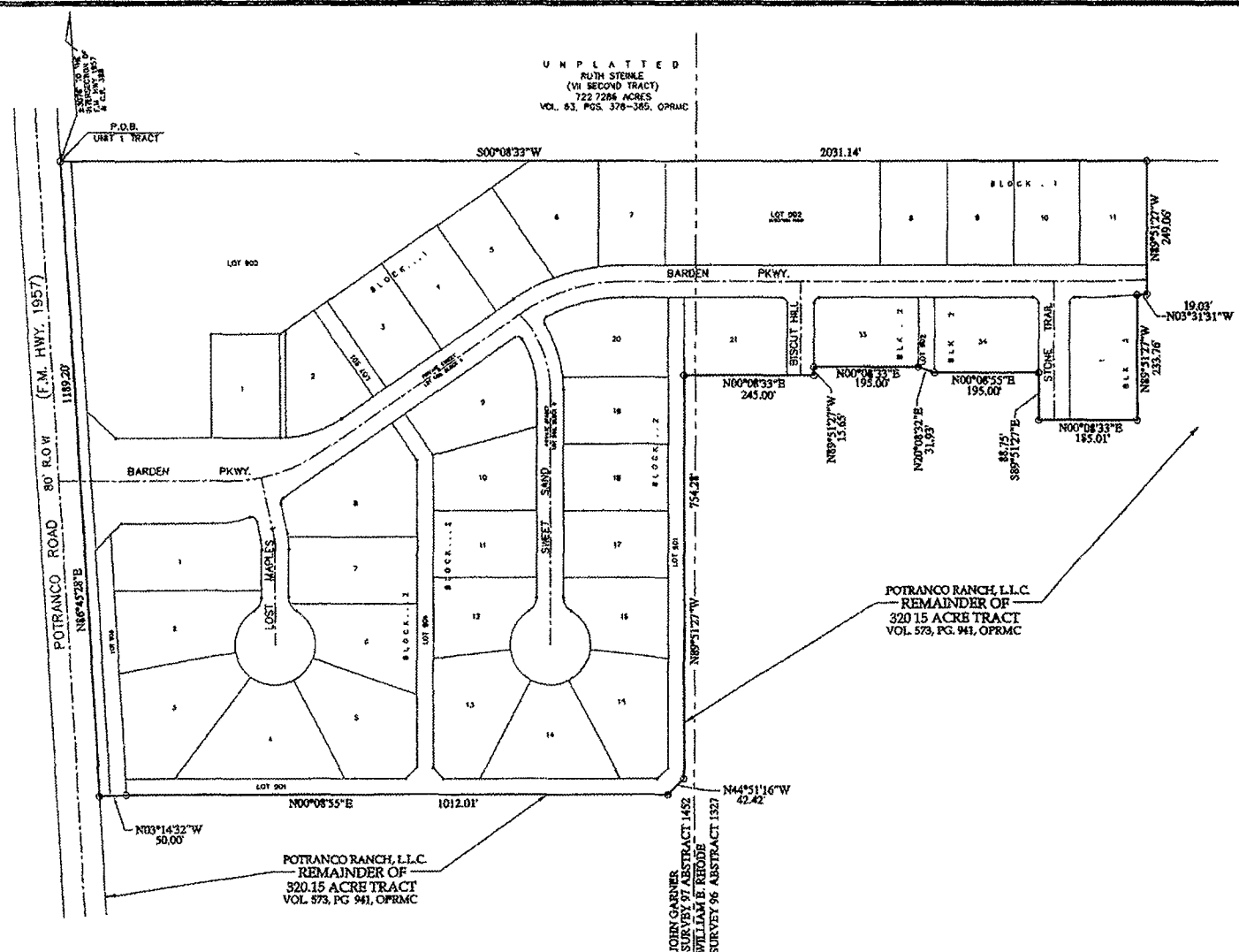
Preliminary Plat of Unit 1

[TO BE ATTACHED]

A handwritten signature or mark, possibly initials, located in the bottom right corner of the page.

DR

ATTACHMENT 1-14
DEVELOPER AGREEMENT

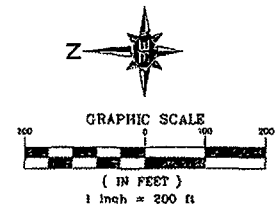


BRIONES
CONSULTING & ENGINEERING LTD.

8118 BROADWAY (210) 828-1431
SAN ANTONIO, TX 78209 (210) 828 1432 fax
TBPE FIRM REG. NO F-5028



38.806 ACRES
POTRANCO RANCH UNIT 1
METES & BOUNDS EXHIBIT



DATE: 2/29/12

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

EXHIBIT “C-1”

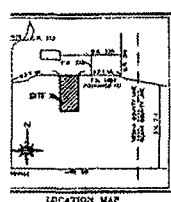
TO

AGREEMENT OF SALE AND PURCHASE AGREEMENT

Depiction of 105 Lots in Units 1-3 of the Subdivision

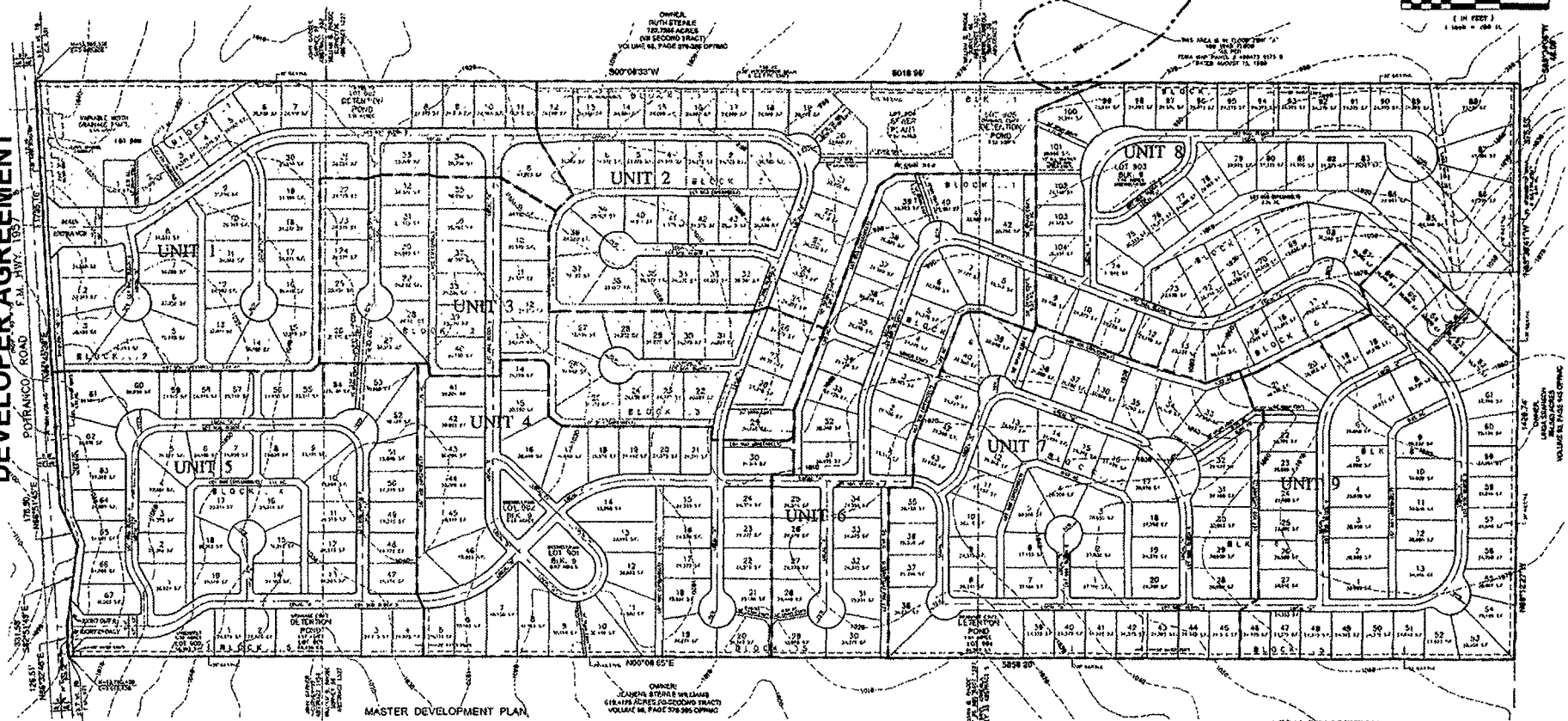
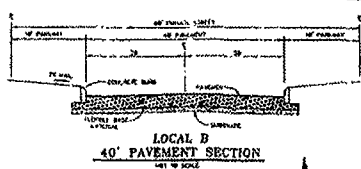
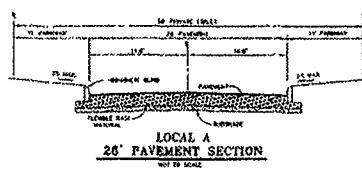
[TO BE ATTACHED]

ATTACHMENT 1-14
DEVELOPER AGREEMENT



- GENERAL NOTES**
- 1) THIS DEVELOPMENT IS LOCATED WITHIN THE MEDINA VALLEY INDEPENDENT SCHOOL DISTRICT.
 - 2) ALL STREETS WITHIN THIS SUBDIVISION ARE PRIVATE AND SHALL BE PERMANENTLY MAINTAINED.
 - 3) ALL PUBLIC UTILITY LINES, INCLUDING BUT NOT LIMITED TO, WATER, SEWER, GAS, ELECTRIC, TELEPHONE & CABLE TELEVISION PASSING THROUGH THE SUBDIVISION, SHALL BE MAINTAINED BY THE MEDINA VALLEY INDEPENDENT SCHOOL DISTRICT.
 - 4) PROPERTY OWNERS ARE ADVISED THAT ALL UTILITIES ARE LOCATED AS SHOWN ON THIS MAP. ANY CHANGES TO THESE UTILITIES SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER.
 - 5) 1/2-INCH DIAMETER IRON RODS (WITH PLASTIC CAPS) SHALL BE SET AT ALL PROPERTY CORNERS, AS ESTABLISHED BY SURVEYING INSTRUMENTS (GPS).
 - 6) ALL BRANCHES AND DISTANCES MEASURED FROM ANY STATE PLANE SOUTH CENTRAL ZONE AS ESTABLISHED BY SURVEYING INSTRUMENTS (GPS).
 - 7) NORTH AND EAST COORDINATES SHOWN ARE TEXAS STATE PLANE SOUTH CENTRAL ZONE AS ESTABLISHED BY SURVEYING INSTRUMENTS (GPS).
- LEGEND**
- EXISTING MOSE CORNERS
 - UNIT LINE
 - OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY
 - U.S. F.T.V. 2
 - SHOWING 1:625

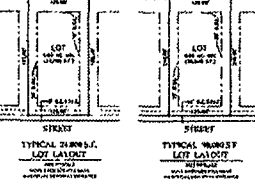
- 8) THE AERIAL COVERAGE SHOWN HEREON ARE KNOWN MOSE MAPS.
- 9) THE OFFICIAL STREET SECTION SHALL BE 36' ALONG 24' PAVEMENT AND 48' PAVEMENT OF 12' SIDEWALK.
- 10) STREET ALIGNMENT MAY BE ADJUSTED DURING CONSTRUCTION PHASE IN ORDER TO MAINTAIN ADEQUATE SIDEWALK WIDTH.
- 11) NO PORTION OF THIS SUBDIVISION LIES WITHIN A FLOODPLAIN OR FLOOD HAZARD ZONE ON THE FLOOD INSURANCE RATE MAP.
- 12) THE GRADING ELEVATIONS OF THE SUBJECT TRACTS ON THE FLOOD INSURANCE RATE MAP ARE AS SHOWN. ANY CHANGES TO THESE ELEVATIONS SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER.
- 13) THE SUBDIVISION SHALL BE DEVELOPED IN 8 LOTS.
- 14) THE SUBDIVISION SHALL BE A C-100 ZONE.
- 15) ALL CROWNED AREAS TO BE USED FOR CROWNED AREAS TO BE OWNED AND MAINTAINED BY THE M.O.A.
- 16) ALL CROWNED AREAS, INCLUDING PAVEMENT & OTHER PLANTS, TO BE OWNED AND MAINTAINED BY THE M.O.A.
- 17) MAINTENANCE OF THE SUBDIVISION SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER.
- 18) THIS SUBDIVISION SHALL BE DEVELOPED BY THE MEDINA VALLEY INDEPENDENT SCHOOL DISTRICT.
- 19) ALL LOTS TO HAVE AN UNDERGROUND WATER SERVICE (GRAY WATER).



ER / DEVELOPER
POTRANCO RANCH, LLC
BLANCO ROAD SUITE #300
ANTONIO, TEXAS
210) 372-0082
210) 377-0738

ENGINEER
BRINE
11111 BRINE DRIVE
SUITE 100
ANTONIO, TEXAS 78204
210) 377-0738
210) 377-0738

MASTER DEVELOPMENT PLAN				
UNIT	LOTS	ACRES	STREET LENGTH	
UNIT 1	35	39.2 AC.	3,450 L.F.	
UNIT 2	34	33.7 AC.	2,520 L.F.	
UNIT 3	36	27.8 AC.	2,500 L.F.	
UNIT 4	35	33.6 AC.	3,890 L.F.	
UNIT 5	44	38.9 AC.	4,000 L.F.	
UNIT 6	30	25.6 AC.	2,570 L.F.	
UNIT 7	47	41.0 AC.	4,345 L.F.	
UNIT 8	47	45.9 AC.	4,085 L.F.	
UNIT 9	44	34.45 AC.	3,345 L.F.	
TOTAL:	352	320.15 AC	30,785 L.F.	



77 DOT R.O.W. DEDICATION
PRIVATE STREETS
DRAIN & SEWER ESMTS.

0.89 ACRES
42.06 ACRES
23.31 ACRES
21.94 ACRES
88.80 ACRES
TOTAL ACREAGE: 320.15 ACRES
88.80 ACRES
TOTAL LOT AREA: 231.35 ACRES

LEGAL DESCRIPTION
BEING A 320.15 ACRE TRACT OF LAND BEING THE SAME LAND AS DESCRIBED IN A DEED FROM RUTH STERLE AUSMUTH TO POTRANCO RANCH, L.P., RECORDED IN VOLUME 573, PAGE 741 OF THE OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY.

231.35 AC. + 50% OF GREENBELT / PARK (11.68 AC) = 242.81 AC
AVERAGE LOT SIZE: 242.81 / 352 LOTS = 0.69 AC.

352 LOTS
TOTAL ACREAGE: 320.15 ACRES

REVISIONS	
NO.	DESCRIPTION
1	REVISED

BRINE ENGINEERING LTD.
CONSULTING & ENGINEERING LTD.
11111 BRINE DRIVE
SUITE 100
ANTONIO, TEXAS 78204
210) 377-0738
210) 377-0738

MASTER DEVELOPMENT PLAN
FOR
POTRANCO RANCH
MEDINA COUNTY, TEXAS

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

EXHIBIT “D”

TO

AGREEMENT OF SALE AND PURCHASE AGREEMENT

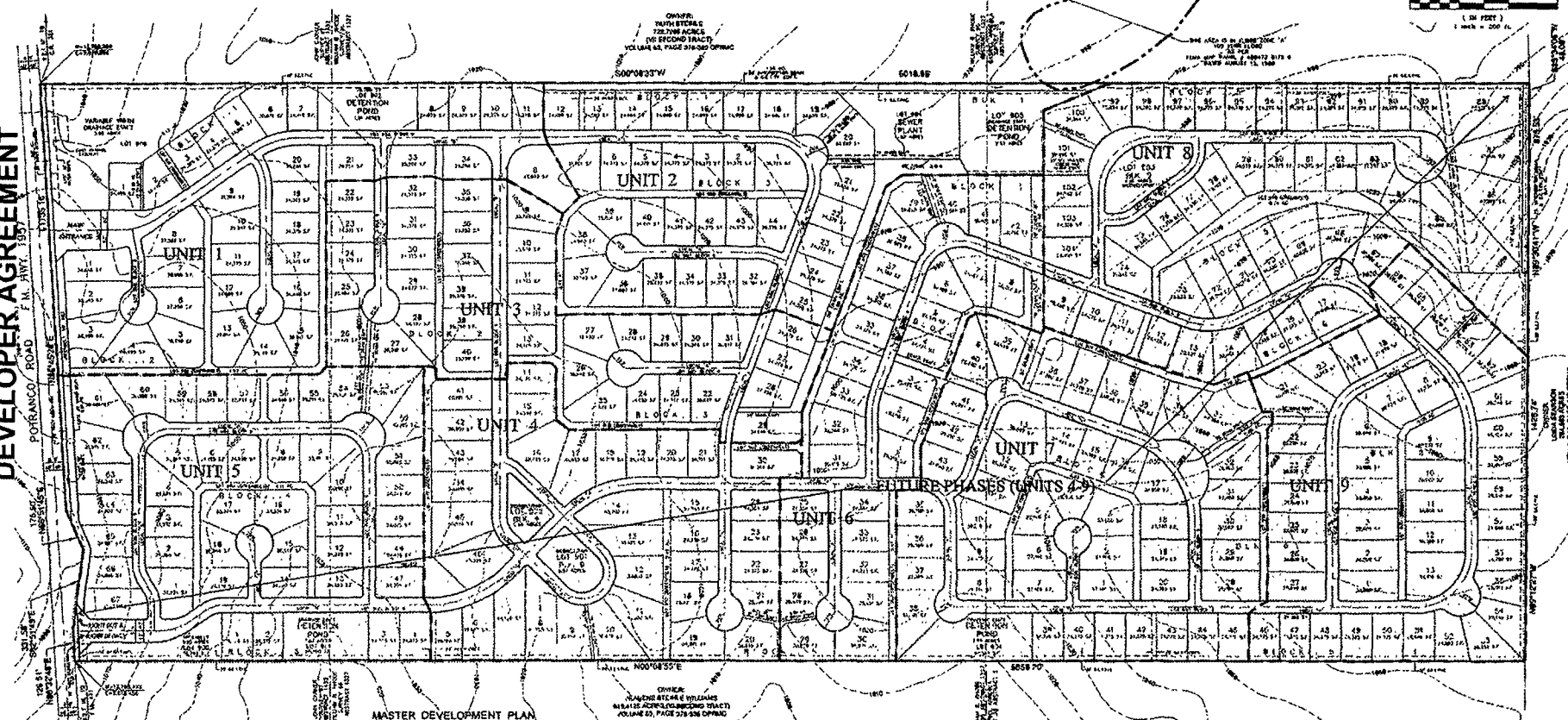
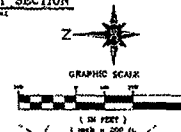
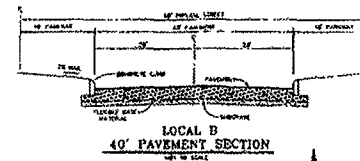
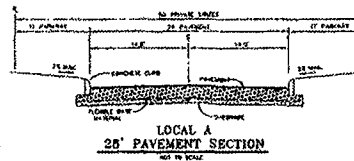
Depiction Of Future Phase(s)

[TO BE ATTACHED]

[illegible]

PROPERTY	ADDRESS	EXISTING USED CONTAINERS
OFFICE	OFFICE	OFFICIAL PUBLIC RECORDS OF MEDICAL COUNTY
Q B T.V.E.	Q B T.V.E.	CAR ELECTRIC TELEPHONE & CABLE TELEVISION EASEMENT
S.P.	S.P.	SQUARE FEET

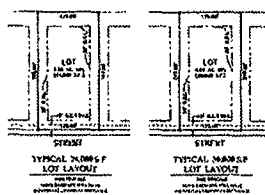
- [illegible]



101
 OFFICE
 PLANNING & ECONOMIC DEVELOPMENT
 2124125 ACRIFOLIOBIOGRAPHY TRACT
 VOLUME 23, PAGE 278-286 OFFICE

[illegible]

UNIT	LOTS	ACRES	STREET LENGTH
UNIT 1	35	39.7 AC	3,450 L F
UNIT 2	34	33.7 AC	2,520 L F
UNIT 3	36	27.8 AC	2,500 L F
UNIT 4	35	33.6 AC	3,990 L F
UNIT 5	44	38.9 AC	4,000 L F
UNIT 6	30	75.6 AC	2,570 L F
UNIT 7	47	41.0 AC	4,345 L F
UNIT 8	47	45.9 AC	4,065 L F
UNIT 9	44	34.45 AC	3,345 L F
TOTAL	352	320.15 AC	30,785 L F



TOTAL ACREAGE: 320.15 ACRES
-88.60 ACRES
TOTAL LOT AREA: 231.35 ACRES

BEING A 320.16 ACRE TRACT OF LAND BEING THE SAME LAND AS DESCRIBED IN A DEED FROM RUTH STEINLE AUSAURN TO POTRANCO RANCH, LP, RECORDED IN VOLUME 573, PAGE 741 OF THE OFFICIAL PUBLIC RECORDS OF MEDINA COUNTY,

TOTAL ACREAGE: 320.15 ACRES

DATE: 02-01-12
JOB No. 2012-10

1 SHEET 1

REVISIONS	
date	description

BE
CONSULTING & ENGINEERING LTD.

15118 BROOKWAY
SAN ANTONIO, TX 78239
(214) 528-1431
(214) 528-1432 fax
TYPE FIRM REG. NO. F-4023

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

EXHIBIT "E"

TO

AGREEMENT OF SALE AND PURCHASE AGREEMENT

WARRANTY DEED

Date: _____

Grantor: _____

Grantor's Mailing Address (including county):

Grantee: _____

Grantee's Mailing Address (including county):

Consideration: _____

Ten Dollars and No/100 (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and [Vendor's lien language].

Property (including any improvements):

Lot(s) _____ in Block _____ of _____ an addition to the City of _____, Texas, according to the map or plat thereof recorded in Volume _____, Page _____, Map Records of _____ County, Texas, together with all improvements thereon and all rights and appurtenances pertaining thereto, including, without limitation, any and all right, title and interest of Grantor in and to all roads, alleys, easements, streets, rights-of- way, and water courses adjacent to, abutting, or serving the Lots, strips and gores, rights of ingress and egress to the Lots, and all permits, approvals, privileges and entitlements appurtenant to the Lots.

Exceptions to Conveyance and Warranty:

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

1. Standby fees, taxes and assessments by any taxing authority for the year 2013 and subsequent years.
2. The matters set forth in Exhibit "A" attached hereto and incorporated herein to the extent same currently exist and affect the Property or any portion thereof.

Grantor, for the Consideration and subject to 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 wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Exceptions to Conveyance and Warranty. Grantor and Grantee acknowledge that taxes for the current year have been prorated as of the date hereof, the payment of which Grantee assumes.

It is expressly agreed and stipulated that a vendor's lien and superior title are retained and reserved against the Property until the above described note and all interest thereon are fully paid; the vendor's lien and superior title retained in this deed are transferred to _____, a Texas _____, without recourse on Grantor.

When this Deed is executed by more than one person, or when the Grantee is more than one person, the instrument shall read as though pertinent verbs, nouns and pronouns were exchanged correspondingly, and when executed by or to a legal entity other than a natural person, the words "heirs, executors and administrators" or "heirs and assigns" shall be construed to mean "successors and assigns." Reference to any gender shall include either gender and in the case of a legal entity other than a natural person, shall include the neuter gender, all as the case may be.

By: _____
Its: _____

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

STATE OF TEXAS §

COUNTY OF MEDINA §

This instrument was acknowledged before me on the ____ day of _____
by _____ as _____ of _____, on behalf of said
_____.

Notary Public, State Of Texas

Return To:

**ATTACHMENT 1-14
DEVELOPER AGREEMENT**

EXHIBIT "F"

TO

AGREEMENT OF SALE AND PURCHASE AGREEMENT

Completion Certificate

Completion Certificate

I, an engineer licensed to practice in the State of Texas, do hereby certify that to the best of my knowledge that the streets, drainage, and utilities constructed pursuant to plans prepared by _____ and identified in identified in Section 9.2(b) of the Agreement of Sale and Purchase between 320 Potranco Ranch, LLC, a Texas limited liability company, as Seller and McMillin Texas Development, LLC, as Buyer, have been installed in substantial accordance with the plans approved by the applicable government authorities, the utility purveyors, and their engineer(s).

_____,
Engineering Firm

By: _____
Name: _____
Title: _____
License No. _____
Date: _____

Checkpoint Contents

Federal Library

Federal Editorial Materials

Federal Tax Coordinator 2d

Chapter F Corporate Formation, Redemptions, Reorganizations, Liquidations

¶ F-1900 Contributions to Capital.

¶ F-1909.1 Contributions in aid of construction to a public water or sewerage disposal utility.

Federal Tax Coordinator 2d

¶F-1909.1. Contributions in aid of construction to a public water or sewerage disposal utility.

A regulated public utility (as defined below) that provides water or sewerage disposal services treats any amount of money or property received from any person (whether or not a shareholder) as a tax-free contribution to its capital so long as:

- (1) that amount is a contribution in aid of construction (CIAC); ^{41.1}
- (2) that amount (or any property acquired or constructed with that amount) is not included in the taxpayer's rate base for rate-making purposes; ^{41.2} and
- (3) if the contribution consists of property other than water or sewerage disposal facilities: ^{41.3}
 - (a) an amount at least equal to the amount of the contribution is expended for the acquisition or construction of tangible property that is used predominantly in the trade or business of furnishing water or sewerage disposal services ^{41.4} and that is either the property for which the contribution was made or is of the same type as such property; ^{41.5}
 - (b) the expenditure occurs before the end of the second tax year after the year that the contribution is received; ^{41.6} and
 - (c) accurate records are kept with respect to the contribution and expenditure amounts, expenditures to which contributions are allocated,

"Predominantly" for purposes of the rule at footnote 41.4 means 80% or more. ^{41.8}

The rule at footnote 41.5 is expected to be narrowly construed. Thus, the acquired or constructed property must be the property that motivated the contribution or substantially identical to such property. ^{41.9}

The expending of an amount equal to the contribution by the specified period (footnote 41.6) is included in the list of time-sensitive acts which may be postponed for taxpayers affected by a Presidentially-declared disaster (see ¶ S-8502). ^{41.10}

A "regulated public utility" is defined in Code Sec. 7701(a)(33) , but a utility that is not *required* to provide water or sewerage disposal services to members of the general public in its service area is not a "regulated public utility." ⁴²

A "water or sewerage disposal facility" is defined as tangible property described in Code Sec. 1231(b) (see ¶ I-9008) that is used predominantly (i.e., 80% or more) in the trade or business of furnishing water or sewerage disposal services. ^{42.1}

For water and sewerage disposal utility purposes, the term "contribution in aid of construction" (CIAC) means any amount of money or other property contributed to a regulated public utility that provides water or sewerage disposal services to the extent that the purpose of the contribution is to provide for the expansion, improvement, or replacement of the utility's water or sewerage disposal facilities. ^{42.2}

A CIAC may include an amount of money or other property contributed to a regulated public utility for a water or sewerage disposal facility subject to a contingent obligation to repay the amount, in whole or in part, to the contributor (an "advance"). For example, an amount received by a utility from a developer to build a water facility under an agreement that provides that the utility will pay the developer a percentage of the receipts from the facility over a fixed period may be a CIAC. Whether an advance is a contribution or a loan is determined under general principles of federal tax law based on all the facts and circumstances. ^{42.3}

A CIAC does not include amounts paid as a service charge for starting or stopping

service.^{42.4} Such a charge is a customer connection **fee** and a customer connection **fee** is not a CIAC and generally is includible in income. The term "customer connection **fee**" also includes any amount of money or other property transferred to the utility representing the cost of installing a connection or service line (including the cost of meters and piping) from the utility's main water or sewer lines to the line owned by the customer or potential customer.^{42.5}

Money or other property contributed for a connection or service line from the utility's main line to the customer's or potential customer's line is not a customer connection **fee** if the connection or service line serves or is designed to serve, more than one customer. For example, a contribution for a split service line that is designed to serve two customers is not a customer connection **fee**. On the other hand, if a water or sewerage disposal utility treats an apartment or office building as one utility customer, then the cost of installing a connection or service line from the utility's main water or sewer lines serving that single customer is a customer connection **fee**.^{42.6}

Money or other property contributed for public and private fire protection services is not a customer connection **fee**.^{42.7}

If a water or sewerage disposal facility is placed in service by the utility before an amount is contributed to the utility, the contribution is not a CIAC for the cost of the facility unless, no later than eight and a half months after the close of the tax year in which the facility was placed in service, there is an agreement, binding under local law, that the utility is to receive the amount as reimbursement for the cost of acquiring or constructing the facility. For this purpose, an order or tariff, binding under local law, that is issued or approved by the applicable public utility commission requiring current or prospective utility customers to reimburse the utility for the cost of acquiring or constructing the facility, is a binding agreement. If an agreement exists, the basis of the facility would be reduced by the amount of the expected contributions. Appropriate adjustments must be made if actual contributions differ from expected contributions.^{42.8}

Illustration 1: M, a calendar year regulated public utility that provides water services, spent \$1 million for the construction of a water facility that can serve 200 customers. M placed the facility in service in Year 1. In June, Year 2, the public utility commission that regulates M approves a tariff requiring new customers to reimburse M for the cost of constructing the facility by paying a service availability charge of \$5,000 per lot. Under the tariff, M

expects to receive reimbursements for the cost of the facility of \$100,000 per year for the years 2 through 11. The reimbursements are CIACs because no later than $8\frac{1}{2}$ months after the close of the taxable year in which the facility was placed in service there was a tariff, binding under local law, approved by the public utility commission requiring new customers to reimburse the utility for the cost of constructing the facility. The basis of the \$1 million facility is zero because the expected contributions equal the cost of the facility. **42.9**

The fact that the applicable ratemaking authority classifies any money or other property received by a utility as a CIAC is not conclusive as to its treatment as a CIAC. **42.10**

An amount received by a utility as a CIAC that is not expended for the acquisition or construction of water or sewerage disposal facilities (the excess amount) is not a contribution to the capital of the taxpayer. Except as provided at footnotes 42.12 and 42.13 below, the excess amount is includible in the utility's income in the tax year in which the amount was received. **42.11** If that excess amount is repaid, in whole or in part, before the end of the second tax year after the tax year in which the amount was received, the repayment amount is not includible in the utility's income. **42.12** If the excess amount is repaid, in whole or in part, after the end of the second tax year after the tax year in which the amount was received, the repayment amount may be deducted by the utility in the tax year in which it is paid or incurred to the extent that amount was included in income. **42.13**

Illustration 2: M, a calendar year regulated public utility that provides water services, received a \$1 million CIAC in Year 1 for the purpose of constructing a water facility. To the extent that the \$1 million exceeded the actual cost of the facility, the contribution was subject to being returned. In Year 2, M built the facility at a cost of \$700,000 and returned \$200,000 to the contributor. As of the end of Year 3, M had not returned the remaining \$100,000. Assuming accurate records are kept, the requirements at footnotes 41.4 to 41.7 are met for \$700,000 of the contribution. Because \$200,000 of the contribution was returned within the time period during which qualifying expenditures could be made, this amount is not includible in M's income. However, the remaining \$100,000 is includible in M's income for Year 1 (the tax year in which the amount was received) because the amount was neither spent nor repaid during the prescribed time period. To the extent M repays the remaining \$100,000 after Year 3, M is entitled to a deduction in the year

the repayment is paid or incurred.

Where a township leased water mains to a water utility at less than a fair rental value, and where the utility had an option to purchase those water mains at the end of the lease term for less than their fair market value, the bargain elements of the lease and sale were effectively contributions of property to the utility that were governed by the above rules. ^{42.15}

No deduction or credit is allowed for any expenditure which is a nontaxable CIAC. ^{42.16}

For the basis of property acquired as a CIAC under the above rules, see ¶ F-1918.1 .

For the extension of the statute of limitations for the assessment of deficiencies with regard to contributions to a regulated public utility, see ¶ T-4221.1 .

For money or other property received by a regulated water or sewerage disposal public utility before Jan. 11, 2001, ^{42.17} *and for transactions entered into before that date,* ^{42.18} the rules at footnotes 42.1 to 42.3 and 42.5 to 42.14 did not apply. ^{42.19} IRS took into account all the facts and circumstances in applying Code Sec. 118(c) . IRS understands that there was uncertainty before proposed regs were published (Jan. 20, '99), and that some utilities may have reasonably interpreted Code Sec. 118(c)(3)(A) (footnote 42.4) to mean that connection and service lines should not be treated as taxable. ^{42.20}

For amounts received before June 13, '96, ^{42.21} the receipt of a CIAC by a regulated public utility that provides water or sewerage services was includible in the utility's gross income under the rules described at ¶ F-1909 . ^{42.22}


For discussion of utilities' receipt of relocation **fees**, see ¶ F-1910 . For a discussion of how property contributed to a utility is valued, see ¶ F-1911 .

A trailer park developer's payments to a public utility to extend its main sewer line to the developer's property was a CIAC and thus was includible in the utility's gross income, where (1) the payments were to be credited to **tap-on fees** which would have been paid by future occupants of the trailer pads, i.e., the payments were made on behalf of potential customers of the utility, (2) the developer's intent in making the payments was to obtain sewer service for the trailer park property that he was developing, (3) the benefit to the utility of owning the sewer extension was

worth less than the construction cost of the cash received, and (4) the ability of the extension to generate additional income for the utility was not assured. Even though there was an incidental benefit to the public as a result of the developer's choice of a sewerage treatment method that happened to have the least negative impact on the environment, the developer chose that method because it best suited his purposes in providing sewer service to his trailer park property, not because of the benefit to the public.^{42.23} On reconsideration, the Tax Court determined that its holding at footnote 42.23 wasn't affected by the fact that the utility didn't receive cash from the developer but instead received the direct benefit of the developer's funds placed into an escrow account, since the escrowed funds were disbursed to contractors to which the utility was liable for construction of the pipeline.^{42.24}

The transfer of a village water system to a public utility by a township wasn't a CIAC where it didn't directly benefit particular customers of the utility, but did benefit the public at large primarily by providing fire protection and secondarily by relieving the township of the burden of operating and maintaining the water system. The transfer (1) wasn't a prerequisite to the provision of services because the township was already receiving water service from the utility, (2) didn't result in the provision of services earlier than would otherwise have been the case had the system not been transferred, and (3) didn't cause the township to be favored in any way.^{42.25}

A surcharge received by a water utility which, under the terms of an agreement mandated by regulatory authorities, was to be held in escrow and used to construct a water reuse facility, was not a contribution to capital. Unlike *Chicago, Burlington & Quincy RR* (¶ F-1920), the surcharge was not the result of bargaining between the utility and its customers, but was imposed by regulatory authorities, and it was not established that the reuse facility would have any substantial value in the taxpayer's hands. IRS viewed the surcharge as indistinguishable from a rate increase granted to a utility on the grounds that it needed funds to construct a wastewater treatment facility to comply with environmental laws.^{42.26}

 **RIA observation:** *IRS Letter Ruling 9624012* (footnote 42.26) did not analyze the surcharge as a CIAC under Code Sec. 118(b) , but instead determined that it did not meet the requirements for a contribution to capital under Code Sec. 118(a) .

For a link to material on the financial reporting treatment of increases or decreases in contributed capital, see ¶ F-1900.

- 41.1 Code Sec. 118(c)(1)(A) ; Reg § 1.118-2(a)(1)(i) .
- 41.2 Code Sec. 118(c)(1)(C) ; Reg § 1.118-2(a)(1)(iii) .
- 41.3 Code Sec. 118(c)(1)(B) ; Reg § 1.118-2(a)(1)(ii) .
- 41.4 Code Sec. 118(c)(2)(A)(ii) .
- 41.5 Code Sec. 118(c)(2)(A)(i) .
- 41.6 Code Sec. 118(c)(2)(B) .
- 41.7 Code Sec. 118(c)(2)(C) .
- 41.8 Code Sec. 118(c)(3)(B) .
- 41.9 Joint Comm Staff, Gen Expln of 104 Cong Tax Legis, 12/18/96, p. 241.
- 41.10 Rev Proc 2002-71, Sec. 6, 2002-48 IRB 850 superseding Rev Proc 2001-53, Sec. 6, 2001-47 IRB 506.
- 42 Code Sec. 118(c)(3)(C) ; Reg § 1.118-2(a)(2)(i) .
- 42.1 Reg § 1.118-2(a)(2)(ii) .
- 42.2 Reg § 1.118-2(b)(1) .
- 42.3 Reg § 1.118-2(b)(2) .
- 42.4 Code Sec. 118(c)(3)(A) .
- 42.5 Reg § 1.118-2(b)(3)(i) .
- 42.6 Reg § 1.118-2(b)(3)(ii)(A) .
- 42.7 Reg § 1.118-2(b)(3)(ii)(B) .
- 42.8 Reg § 1.118-2(b)(4)(i) .
- 42.9 Reg § 1.118-2(b)(4)(ii) .
- 42.10 Reg § 1.118-2(b)(5) .
- 42.11 Reg § 1.118-2(c)(2)(i) .
- 42.12 Reg § 1.118-2(c)(2)(ii)(A) .
- 42.13 Reg § 1.118-2(c)(2)(ii)(B) .
- 42.14 Reg § 1.118-2(c)(3) .
- 42.15 IRS Letter Ruling 9817022 .
- 42.16 Code Sec. 118(c)(4) .

42.17 Reg § 1.118-2(f) . **GAAP/Ch. F-1909.1 Fed. Tax Coord. 2d**

42.18 Preamble to TD 8936, 1/11/2001 .

42.19 Reg § 1.118-2(f) ; Preamble to TD 8936, 1/11/2001 .

42.20 Preamble to TD 8936, 1/11/2001 .

42.21 Sec. 1613(a)(3), PL 104-188, 8/20/96 .

42.22 Code Sec. 118(c) before amend by Sec. 1613(a)(1)(B), PL 104-188, 8/20/96 .

42.23 Epco Inc, (1995) TC Memo 1995-249, RIA TC Memo ¶95249, 69 CCH TCM 2829, motion den (1995) TC Memo 1995-499, RIA TC Memo ¶95499, 70 CCH TCM 1035, vacd & remd (1997, CA8) 79 AFTR 2d 97-321, 104 F3d 170, 97-1 USTC ¶50133 .

42.24 Epco Inc, (1995) TC Memo 1995-249, RIA TC Memo ¶95249, 69 CCH TCM 2829, motion den (1995) TC Memo 1995-499, RIA TC Memo ¶95499, 70 CCH TCM 1035, vacd & remd (1997, CA8) 79 AFTR 2d 97-321, 104 F3d 170, 97-1 USTC ¶50133, on remand (1999) TC Memo 1999-103, RIA TC Memo ¶99103, 77 CCH TCM 1731.

42.25 IRS Letter Ruling 9520030 .

42.26 IRS Letter Ruling 9624012 .

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**ATTACHMENT 1-15
DEVELOPER CONTRIBUTIONS**

**320 Potranco Ranch, LLC
15720 Bandera Rd. Suite 103
Helotes, Texas 78023
TEL 210-695-5490/ FAX 210-695-6580**

October 21, 2016

Re: Forest Glen Utility Co Sewer Infrastructure Unit 6:

Potranco Ranch, LLC is contributing the Unit 6 sewer infrastructure to Forest Glen Utility in the amount of \$112,748.60 as per Exhibit "A"



Harry Hausman-Manager

10.21.16

Date

CONTINUATION SHEET

Exhibit "A"

Page 3 of 5

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 10

Application Date : 06/25/16

To:

Architect's Project No.:

Invoice #: 1510910FRT

Contract : 15109 Potranco Ranch Unit 6

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
					(Not in D or E)	(D+E+F)			
22	San. Sewer 8 SDR 26 (10'-14') PR 160"	2,781.00	2,781.00	0.00	0.00	2,781.00	100.00%	0.00	
23	San. Sewer 8 SDR 26 (14'-18') PR 160"	6,310.10	6,310.10	0.00	0.00	6,310.10	100.00%	0.00	
24	W/T San. Sewer Manhole (0-6')	13,170.00	13,170.00	0.00	0.00	13,170.00	100.00%	0.00	
25	Extra Depth Manhole V.f.	3,976.00	3,976.00	0.00	0.00	3,976.00	100.00%	0.00	
26	Sanitary Sewer Laterals (6)'"	50,713.00	50,713.00	0.00	0.00	50,713.00	100.00%	0.00	
27	Wyes (8x6)'"	3,660.00	3,660.00	0.00	0.00	3,660.00	100.00%	0.00	
28	Vertical Stacks (6)'"	2,210.30	2,210.30	0.00	0.00	2,210.30	100.00%	0.00	
29	Sewer Main I.V. Inspection	909.30	909.30	0.00	0.00	909.30	100.00%	0.00	
	ON-SITE SEWER IMPROVEMENTS 1	112,748.60	112,748.60	0.00	0.00	112,748.60	100.00%	0.00	0.00
Bill Group: 03 GREY WATER IMPROVEMENTS									
30	PVC (2) SDR 26 PR 100 W/Valses	15,783.20	15,783.20	0.00	0.00	15,783.20	100.00%	0.00	
31	3/4" Service Tapp. Saddle Thru Box	15,314.00	15,314.00	0.00	0.00	15,314.00	100.00%	0.00	
32	3/4" Service Connect To Exist Tapp Saddle	10,906.00	10,906.00	0.00	0.00	10,906.00	100.00%	0.00	
33	Hydrostatic Pressure Test	1,750.00	1,750.00	0.00	0.00	1,750.00	100.00%	0.00	
34	Meter Box	5,379.00	5,379.00	0.00	0.00	5,379.00	100.00%	0.00	
	GREY WATER IMPROVEMENTS Tot	49,132.20	49,132.20	0.00	0.00	49,132.20	100.00%	0.00	0.00
Bill Group: 04 STREET IMPROVEMENTS									
35	Right-of-way & Easement Clearing	12,000.00	12,000.00	0.00	0.00	12,000.00	100.00%	0.00	
36	Street Excavation	43,625.00	43,625.00	0.00	0.00	43,625.00	100.00%	0.00	
37	Street Embankment	600.00	600.00	0.00	0.00	600.00	100.00%	0.00	
38	3' X 5 Rock Subgrade"	2,214.00	2,214.00	0.00	0.00	2,214.00	100.00%	0.00	
39	Lime Stabilized Subgrade (6) 29 6 Lbs/SY"	44,407.00	44,407.00	0.00	0.00	44,407.00	100.00%	0.00	
40	Lime Stabilized Subgrade (8) 39 5 Lbs/SY"	1,420.80	1,420.80	0.00	0.00	1,420.80	100.00%	0.00	
41	Flexible Base (9 Compacted)'"	76,703.00	76,703.00	0.00	0.00	76,703.00	100.00%	0.00	
42	Flexible Base (14 Compacted)'"	3,552.00	3,552.00	0.00	0.00	3,552.00	100.00%	0.00	

ATTACHMENT 1-15
DEVELOPER CONTRIBUTIONS

FGU217