

BOB12202022

AMENDED AND RESTATED HERITAGE PUBLIC IMPROVEMENT DISTRICT  
FINANCING AND REIMBURSEMENT AGREEMENT

BETWEEN

M/I HOMES OF AUSTIN, LLC, an Ohio limited liability company,

AND

THE CITY OF DRIPPING SPRINGS, TEXAS

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AMENDED AND RESTATED HERITAGE PUBLIC IMPROVEMENT DISTRICT  
FINANCING AND REIMBURSEMENT AGREEMENT

This Amended and Restated Heritage Public Improvement District Financing and Reimbursement Agreement (this “**Agreement**”), dated as of December 20, 2022, (the “**Effective Date**”), is entered into between M/I Homes of Austin, LLC, an Ohio limited liability company (including its successors, assigns, or transferees, the “**Owner**”), and the City of Dripping Springs, Texas (the “**City**”), a municipal corporation, acting by and through its duly authorized representative, with BobWhite Investments, L.P., a Texas limited partnership (“**BobWhite**”), and Tri Pointe Homes Texas, Inc., a Texas corporation formerly known as Trendmaker Homes (“**Tri Pointe**”), each as a consenting party (BobWhite and Tri Pointe are collectively referred to herein as the “**Consenting Party**”) (the City and the Owner are individually referred to herein as a “**Party**” and collectively as the “**Parties**”).

**RECITALS:**

**WHEREAS**, Owner, together with the Consenting Party, owns a total of approximately 189 acres of land more particularly described on Exhibit “B” attached hereto and made a part hereof (the “**Property**”);

**WHEREAS**, the Property is being developed as a master planned community by Owner, its affiliates and/or their successors and assigns, including future owners and developers (the “**Project**”);

**WHEREAS**, on June 29, 2017, SLF IV – Dripping Springs JV, L.P., a Texas limited partnership (“**SLF**”), submitted and filed with the City Secretary of the City an Amended and Restated Petition (the “**PID Petition**”) requesting the creation of the Heritage Public Improvement District (the “**District**”);

**WHEREAS**, the City Council of the City (the “**City Council**”) authorized the full purpose annexation of the Property pursuant to Ordinance No. 1803.91 adopted on October 17, 2017;

**WHEREAS**, the City adopted Ordinance No. 1220.124 on October 10, 2017, establishing zoning for the Property;

**WHEREAS**, SLF sold the land subject to the Original Agreement to Owner and Tri Pointe on May 3, 2021;

**WHEREAS**, the City Council approved that certain Annexation and Development Agreement, by and between SLF, BobWhite, and the City, dated October 17, 2017, covering the Property which, among other things, addresses certain aspects of the annexation, and zoning and development of the Property, and on May 3, 2021, SLF, the Owner, and Tri Pointe entered into that certain Assignment of Annexation and Development Agreement, in which SLF assigned all its right, title and interest in the Annexation and Development Agreement to the Owner and Tri Pointe (collectively, the “**Annexation and Development Agreement**”);

**WHEREAS**, the City Council approved that certain Offsite Road and Trail Agreement, by and between SLF and the City, on October 17, 2017, and on May 3, 2021, SLF, the Owner, and Tri Pointe entered into that certain Assignment of Offsite Road and Trail Agreement, in which SLF assigned all its right, title and interest in the Offsite Road and Trail Agreement to the Owner and Tri Pointe (collectively, the “**Offsite Road and Trail Agreement**”);

**WHEREAS**, the City Council approved that certain Wastewater Service and Impact Fee Agreement, by and between SLF and the City, on October 17, 2017, and on May 3, 2021, SLF, the Owner, and Tri Pointe entered into that certain Assignment of Wastewater Service and Impact Fee Agreement, in which SLF assigned all its right, title and interest in the Wastewater Service and Impact Fee Agreement to the Owner and Tri Pointe (collectively, the “**Wastewater Agreement**”);

**WHEREAS**, the City Council approved that certain Heritage Public Improvement District Financing Agreement on October 17, 2017, by and between SLF and the City (the “**Original Agreement**”), and on May 3, 2021, SLF, the Owner, and Tri Pointe entered into that certain Assignment of Heritage Public Improvement District Financing Agreement, in which SLF assigned all its right, title and interest in the Original Agreement to the Owner and Tri Pointe;

**WHEREAS**, the City Council approved the Assignments and confirmed Owner’s satisfaction of the requirements for the Assignments on November 10, 2020;

**WHEREAS**, pursuant to the terms of the Original Agreement, the City agreed to allow financing of certain Authorized Improvements (defined herein) within and/or benefitting or serving the Property via a public improvement district;

**WHEREAS**, pursuant to that certain Joint Ownership and Development Agreement, made and entered into on July 27, 2020, by and between Owner and Tri Pointe (the “**JODA**”), all decisions respecting the planning, approval and completion of the Authorized Improvements that do not constitute Major Decisions (defined in the JODA) shall be made by Owner, and Owner agrees to reimburse Tri Pointe for its Percentage interest (defined in the JODA) in any and all rights under this Agreement, including the Reimbursement Balance and PID Bond (defined herein) proceeds, pursuant to the terms contained therein;

**WHEREAS**, this Agreement amends, restates, and replaces the Original Agreement in its entirety;

**WHEREAS**, the City acknowledges that Owner’s cooperation in this endeavor enables the City to establish, define, and protect the City’s jurisdiction and regulatory authority over the Property, and that Owner undertook, as assignee of and/or successor to the Owner’s predecessor, the rights and obligations under the prior agreements relating to the Property, including the Annexation and Development Agreement, the Offsite Trail and Road Agreement, the Wastewater Agreement, and the Original Agreement, in contemplation of entering into this Agreement;

**WHEREAS**, the Owner of the Property (and/or its successors and assigns) desires and intends to design, construct and install certain amenities to serve residents of the Project (the

“**Private Improvements**”), which Private Improvements, including major components that are critical to the Project, are generally described but not limited to, those in Exhibit “C”;

**WHEREAS**, pursuant to the terms of this Agreement, the City has agreed to accept and to pay or reimburse the Owner via the District for certain of the improvements that will serve the Property in the District being the Improvement Area #1 Authorized Improvements, the Future Improvement Area Authorized Improvements all as shown in the Assessment Plan (defined herein) (collectively, the “**Authorized Improvements**”);

**WHEREAS**, the Owner (and/or its successors and assigns) proposes to construct certain internal phase improvements within the District, including water infrastructure, including all major components that are critical to the Project, (the “**Non-PID Funded Authorized Improvements**”) and transfer these improvements to the City or other applicable entity in accordance with the terms and provisions of this Agreement and the Annexation and Development Agreement;

**WHEREAS**, the Owner and the City estimate that the total costs of the Project will be \$55,127,650, consisting of the cost of the Authorized Improvements in the amount of \$24,048,376, the costs of the Non-PID Funded Authorized Improvements anticipated to be \$17,182,682 and the cost of the Private Improvements anticipated to be \$13,896,593 (provided that such estimates are for informational purposes and may deviate from the final amounts);

**WHEREAS**, the City, subject to the consent and approval of the City Council, the satisfaction of all conditions for PID Bond issuance and Owner’s compliance with this Agreement and the Annexation and Development Agreement, and in accordance with the terms of this Agreement and all legal requirements, including but not limited to the Indentures, intends to: (i) adopt an Assessment Plan; (ii) adopt an Assessment Ordinance (defined herein) (which will levy special assessments on the Property located within the District to pay for Authorized Improvements and the costs associated with the administration of the District and the issuance of the PID Bonds); and (iii) issue, in multiple series, up to \$27,500,000 in the principal amount of PID Bonds for the purpose of financing the costs of the Improvements and paying associated costs as described herein;

**WHEREAS**, all or a portion of the Wastewater Improvements may be constructed by the City, in which case a portion of the proceeds of the PID Bonds may be used to reimburse the Owner for Owner's proportionate share of the costs of such Wastewater Improvements as provided in the Wastewater Agreement;

**WHEREAS**, prior to the sale of PID Bonds: (a) the City Council shall have approved and adopted the Assessment Plan and Assessment Ordinance; (b) owners of the Property constituting all of the acreage in the PID shall have executed a Landowner Certificate (as defined in Section 2.04, herein); and (c) the Owner, BobWhite, and Tri Pointe shall have delivered a fully executed copy of the Landowner Certificate to the City;

**WHEREAS**, the City will, upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement, accept the Authorized Improvements (or Segments thereof) provided for in this Agreement and the Owner will be paid or reimbursed for the Costs of such accepted Authorized Improvements (or Segments thereof), solely from Special Assessments or the proceeds of the PID Bonds;

**WHEREAS**, it is also intended that Owner will be reimbursed for its Costs (as defined herein) not covered by the PID Bonds by allowing Owner to receive a portion of available Special Assessments (as defined herein) over time, as more particularly described herein, all to the extent sufficient Special Assessment Revenues (defined herein) are available for such reimbursement.

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

## **ARTICLE I. SCOPE OF AGREEMENT**

The Recitals set forth in the Preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Article. Definitions used herein, and not otherwise defined, are set forth in Exhibit "A" attached hereto and made a part hereof and in the Assessment Plan. This Agreement amends, restates, and replaces in its entirety the Original Agreement.

## **ARTICLE II. APPORTIONMENT, LEVY AND COLLECTION OF SPECIAL ASSESSMENTS**

### **Section 2.01. Preliminary Matters**

(a) The Property is intended to be developed in Phases. It is anticipated that some of the Authorized Improvements will be constructed that benefit only one or more Phases, while other Authorized Improvements will benefit the entire District. As a result, Special Assessments will be levied on a given Improvement Area from time to time as provided in this Agreement. The Costs for the Improvement Area #1 Authorized Improvements are anticipated to be initially funded by the Owner and then reimbursed from the proceeds of the Special Assessments on Improvement Area #1 and the proceeds of Improvement Area #1 Bonds. The Costs for the Future Improvement Area Authorized Improvements are anticipated to be initially funded by the Owner and then reimbursed from the proceeds of the Special Assessments on Future Improvement Areas and the proceeds of Future Improvement Area Bonds, as applicable. Notwithstanding the foregoing, with respect to the Shared Authorized Improvements, the pro rata benefit of the Cost of those Shared Improvements also constituting Authorized Improvements to each Improvement Area (as set forth in the Assessment Plan) will be allocated to each Improvement Area based on the benefit to that Improvement Area (as set forth in the Assessment Plan), such that only the Allocable Share of the Cost of a Shared Authorized Improvement will be funded by the PID Bonds secured by the Special Assessments on each Improvement Area. The Parties hereby acknowledge and agree that any references in this Agreement to the Owner's obligation to construct any given Wastewater Improvements and offsite road and/or offsite trail may be disregarded should the City build such improvement and in such event the provisions of this Agreement pertaining to design, construction, acquisition and administration of Authorized Improvements do not apply to those improvements built by the City.

(b) The Owner acknowledges and agrees that the Assessment Plan must meet the requirements of Texas Local Government Code §§ 372.013 and 372.014 and be presented to the City Council for review and approval prior to levy of assessments and issuance of PID Bonds. The final Assessment Plan approved pursuant to the initial Assessment Ordinance shall contain an engineering report accepted and approved by the City. Each time a new assessment levy is requested



an updated engineering report shall be provided by the Owner and submitted for review and approval by the City prior to levy of assessments. After approval, the Assessment Plan will be updated and amended by the PID Administrator at least once per year, and submitted for the City Council's review and approval. Notwithstanding the above, it is hereby understood and acknowledged by the Parties that the Assessment Plan may need to be amended over time if there are any changes in the Authorized Improvements, in accordance with the terms set forth in this Agreement. Nevertheless, the basic terms and methodology described in the initial Assessment Plan will generally apply to all series of the PID Bonds.

(c) Special Assessments on any portion of the Property will bear a direct proportional relationship to and be less than or equal to the special benefit of the Authorized Improvements to that portion of the Property.

(d) Special Assessments on any portion of the Property may be updated or reduced in connection with subsequent PID Bond issues or otherwise so long as the Special Assessments are determined in accordance with the Assessment Plan.

(e) Prior to issuing any PID Bonds, and in the event the City determines to use an Appraisal, the City shall obtain an Appraisal at the expense of the Owner covering the Improvement Areas that will be subject to the Special Assessments securing such PID Bonds. The City shall select the appraiser, with input from the Owner, and all reasonable fees of the Appraisal shall be paid by the Owner. Notwithstanding the foregoing, the City has the authority to make the final decision on the appraiser.

(f) Upon approval of an Assessment Ordinance, the City will then levy the Special Assessments pursuant to the Assessment Plan.

(g) If the Owner provides a Bond Issuance Request, the City will consider the issuance of PID Bonds as set forth in Section 5.01 (a) below.

(h) It is anticipated that the Owner will construct, or cause the construction of, the applicable Authorized Improvements, except as provided in Section 2.01(b) above.

### **Section 2.02.** Apportionment and Levy of Special Assessments.

The City intends to levy Special Assessments on the Property in accordance herewith (including Article IV hereof) and with the Assessment Plan at such time as an Assessment Ordinance is approved by the City. The City's apportionment and levy of Special Assessments shall be made in accordance with the PID Act.

### **Section 2.03.** Collection of Special Assessments.

(a) The City covenants and agrees that it shall, as authorized by the PID Act and other applicable law, continuously collect or cause to be collected Special Assessments levied pursuant to the Assessment Plan during the term of this Agreement in the manner and to the maximum extent permitted by applicable law. The City covenants and agrees that to the extent permitted by applicable law, it will not permit a reduction, abatement, or exemption in the Special Assessments due on any portion of the Property until the PID Bonds secured by that particular portion of the

Property are no longer outstanding, whether as a result of payment in full or in part, defeasance or otherwise and until the Owner has been reimbursed for the unreimbursed Costs eligible to be paid from the Special Assessments; provided that certain portions of the Property, as defined in the Assessment Plan, will not be subject to the Special Assessments. The City shall use good and sound practices to collect, or cause to be collected, the Special Assessments consistent with the City's policies and standard practices applicable to the collection of City taxes and assessments, as permitted by law.

(b) The Special Assessments can be used for the following purposes: (i) after completion of the applicable Authorized Improvements (or Segments), but prior to the issuance of PID Bonds for those Authorized Improvements secured by assessments levied on a specific Improvement Area, Owner will be reimbursed for Costs associated with those Authorized Improvements (or Segments) from Special Assessment Revenues collected by the City from the Improvement Area in question and (ii) after PID Bonds are issued secured by any assessments levied on a specific Improvement Area, the Special Assessment Revenues from such Improvement Area will be used first to fund debt service, prepayment and delinquency reserves and Administrative Expenses payable for such year pursuant to the Indenture, and second, to the extent (and only to the extent) any such Special Assessment Revenues are remaining, to reimburse Owner for any Costs not reimbursed by the PID Bonds. Any reimbursement obligation to Owner under Sections 4.01, 4.02, or 4.03 hereof or from Special Assessments as provided above, will be subordinate to use of Special Assessments for payment of the applicable PID Bonds as provided in an Indenture and will terminate immediately at the earlier of (i) the date that the Owner has been reimbursed for all reimbursable Costs or (ii) the date that all PID Bonds have been issued.

(c) Notwithstanding anything to the contrary contained herein or in the Assessment Plan, once PID Bonds have been issued, the Special Assessment Revenues collected annually from the applicable Improvement Area will be deposited in the Pledged Revenue Fund and thereafter transferred in the priority as set forth in the Indenture.

(d) Further, notwithstanding anything to the contrary contained herein, the City covenants to use diligent, good faith efforts to contract with Hays County for the collection of the Annual Installments such that the Annual Installments will be included on the ad valorem tax bill(s) for the Property and will be collected as part of and in the same manner as ad valorem taxes. Owner will cooperate with the City regarding any such effort with Hays County.

**Section 2.04.** Approval and Recordation of Special Assessments through Landowner Certificate.

Concurrently with the levy of the Special Assessments for any portion of the Property, the Owner shall execute (and shall cause any other owner of any of the Property at the time of execution that will be subject to the Special Assessments, including the Consenting Parties, to execute) a "**Landowner Certificate**" (herein so called) in which such landowners shall approve and accept the apportionment of assessments in the Assessment Plan and the levy of the Special Assessments by the City. The Landowner Certificate shall further (a) evidence each landowner's intent that the Special Assessments be covenants running with the land that (i) will bind any and all current and successor owners of the Property to the Special Assessments, including applicable interest thereon, as and when due and payable thereunder and (ii) provide that subsequent purchasers of such land take their title subject to and expressly assume the terms and provisions

of the Special Assessments; and (b) provide that the liens created by the levy of the Special Assessments are a first and prior lien on the Property, subject only to liens for ad valorem taxes of the City, county, school district, any special district with taxing authority overlapping the Property or other political subdivision.

### **Section 2.05. Costs**

(a) Notwithstanding anything to the contrary contained herein, the City and Owner hereby acknowledge and agree that the Costs expended by Owner may not be fully reimbursed from Special Assessments or the applicable series of PID Bonds. The Costs expended by Owner, but not funded by the applicable series of PID Bonds, are payable solely from the applicable PID Reimbursement Fund as more particularly described herein; provided that sufficient Special Assessment Revenues are available for the foregoing.

(b) The provisions of this Section 2.05 shall hereby constitute a “reimbursement” under Chapter 372 of the Texas Local Government Code.

(c) The Owner Reimbursement provisions contained in this Section 2.05 shall not, under any circumstances, give rise to or create a charge against the general credit or taxing power of the City or a debt or other obligation of the City payable from any source other than net proceeds from the PID Bonds and Special Assessment Revenues.

(d) Owner’s right, title and interest into the payments of unreimbursed Costs shall be the sole and exclusive property of Owner (or its Transferee) and no other third party shall have any claim or right to such funds unless Owner transfers its rights to its unreimbursed Costs to a Transferee in writing and otherwise in accordance with the requirements set forth herein. Owner has the right to convey, transfer, assign, mortgage, pledge, or otherwise encumber, in whole without the consent of (but with prior written notice to) the City, all of Owner’s right, title, or interest under this Agreement including, but not limited to, any right, title or interest of Owner in and to payment of its unreimbursed Costs (a “**Transfer**,” and the person or entity to whom the transfer is made, a “**Transferee**”). Owner waives all rights or claims against the City for any funds paid to a third party as a result of a Transfer for which the City received notice. The foregoing notwithstanding, no Transfer of payments hereunder may be pledged to the payment of debt service on public securities issued by any state of the United States or any political subdivision thereof without the approval of the City Council.

Notwithstanding the foregoing, no Transfer shall be effective until written notice of the Transfer, including the name and address of the Transferee, is provided to the City. The City may rely conclusively on any written notice of a Transfer provided by Owner without any obligation to investigate or confirm the Transfer.

If the applicable portion of Authorized Improvements has not already been constructed and to the extent PID Bond proceeds are insufficient to fund such Cost, Owner shall, at the time of closing the PID Bonds, fund or provide evidence of funding sources (including, but not limited to a letter of credit or evidence of available funds through a loan to Owner) sufficient to fund the difference between the Costs and the PID Bond proceeds available to fund such Costs related to the applicable Authorized Improvement (without limiting any other provision, in the event Owner does not or cannot provide such funding or evidence of funding sources, the City shall not be

required to sell such PID Bonds, and Owner shall reimburse the City for all expenses and liabilities incurred by the City in connection with the proposed issuance of the PID Bonds).

**Section 2.06.** Obligations Payable from Special Assessment Revenues.

**THE PID BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE CITY SECURED SOLELY BY PLEDGED REVENUES (AS DEFINED IN THE INDENTURE) AND ANY OTHER FUNDS HELD UNDER THE INDENTURE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE PID BONDS DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY AND ARE NOT SECURED EXCEPT AS PROVIDED IN THE INDENTURE. THE OWNERS OF THE PID BONDS SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES AND ANY OTHER FUNDS HELD UNDER THE INDENTURE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO THE OWNERS OF THE PID BONDS TO PAY THE PID BONDS OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES.**

**FURTHERMORE, ALL REIMBURSEMENTS FROM THE CITY TO OWNER FROM SPECIAL ASSESSMENTS ARE SUBORDINATE TO PAYMENT OF THE APPLICABLE PID BONDS AND THE ESTABLISHMENT OF ANY OTHER FUNDS HELD UNDER THE INDENTURE ALL AS SET FORTH IN THE INDENTURE. SUCH REIMBURSEMENTS DO NOT GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY. THE OWNER SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENT THEREOF OUT OF ANY FUNDS OF THE CITY OTHER THAN AS AND TO THE EXTENT PROVIDED IN THE INDENTURE. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO THE OWNER TO PAY REIMBURSEMENTS OUT OF ANY FUNDS OF THE CITY OTHER THAN AS PROVIDED IN THE INDENTURE.**

**ARTICLE III. CONSTRUCTION AND ACQUISITION**

**Section 3.01.** Acquisition of Authorized Improvements

(a) The Owner will obtain approval of construction plans, or landscaping plans, as appropriate, for the Authorized Improvements from the City prior to commencing construction of the Authorized Improvements.

(b) The Owner will dedicate those Authorized Improvements not addressed by Subsection (c) or (d) below to the City upon completion of said Authorized Improvements, and the City will accept dedication of such Authorized Improvements after confirming that the Authorized Improvements have been completed in accordance with this Agreement, applicable Code provisions and have been accepted by the City Council.

(c) The Owner will dedicate, convey, or otherwise provide to or for the benefit of the City or an Owners Association the Authorized Improvements. The City hereby acknowledges and

agrees that (i) the Authorized Improvements will be dedicated, conveyed, leased or otherwise provided to or for the benefit of the City or an Owner's Association, and (ii) that any Authorized Improvements conveyed or dedicated to an Owners Association are provided "for the benefit of" the City in accordance with Section 372.023 (a) of the PID Act and such Owner's Association will be an entity authorized and approved by the City Council and authorized by the City to own, operate and maintain such Authorized Improvements for the City in accordance with Section 372.023(a)(3) of the PID Act. Without limiting the generality of any of the foregoing, with respect to the HOA Maintained Improvements (other than landscaping in public right of way), the Owner will grant the City an easement in a form acceptable to the City granting the City and the public the right of access to and use of such Authorized Improvements in order to evidence that although such Authorized Improvements are owned and maintained by such Owner's Association, the Authorized Improvements are provided for the use and benefit of the public.

(d) With respect to the (i) HOA Maintained Improvements consisting of landscaping in public right of way and (ii) detention/amenity ponds dedicated to the City, the City will grant a license in a form acceptable to the City to the Owner's Association granting the Owner's Association the right to maintain such Authorized Improvements.

(e) If any of the water infrastructure serving the Property becomes eligible to be an Authorized Improvement because the water service provider becomes an entity described under Section 372.023(a) of the PID Act, such water infrastructure may be considered as an Authorized Improvement and will be provided for in an amendment in writing to this Agreement between the City and Owner and an amended and restated Assessment Plan, and Owner will dedicate such infrastructure in the same manner identified in subparagraph (b) above.

### **Section 3.02. Designation of Construction Manager, Construction Engineers**

(a) The City hereby designates the Owner, or its assignees, as the Construction Manager with full responsibility for the design, the designation of easement locations, facilities site designations and acquisitions, supervision of construction, and the bidding and letting of construction contracts for the construction of the Authorized Improvements in accordance with the provisions of this Article III, subject to the City's review and approval of design specifications and easement locations.

(b) Inspection of the construction of all Authorized Improvements shall be performed by the City Construction Representative or its designees. The Owner shall pay inspection fees which shall be included in the Cost and may later be reimbursed to Owner out of PID Bond proceeds when PID Bonds are issued or Special Assessment Revenues when levied.

(c) The Owner shall be entitled to a separate pro rata Construction Management Fee for the construction of the Roger Hanks connection offsite improvement described in the Assessment Plan, unless Owner contracts with a third party to act as the Construction Manager with respect to construction of such Authorized Improvements in which case such third party shall be entitled to a Construction Management Fee. Except for authorizing payment out of the proceeds of PID Bonds the City shall have no obligation to pay any such Construction Management Fee.

(d) The City shall cooperate with the Owner in connection with its services as Construction Manager.

(e) The Owner shall designate engineers licensed by the Texas Board of Professional Engineers for the Authorized Improvements for the compensation specified by the Owner. If Owner replaces the consulting engineer, within ten (10) days, the Owner shall provide written notice to the City of the replacement of the consulting engineer.

**Section 3.03. Designation of Construction Manager Subcontractor**

Owner may subcontract out all or some of the duties of Construction Manager to a third party. Owner may designate an individual, company, or partnership or other entity as a subcontractor for construction management services for one or more Authorized Improvements or distinct Segments thereof. The Owner shall provide the City with written notice within ten (10) days of such subcontract or designation.

**Section 3.04. Fiscal Security**

The Owner shall be required to post fiscal security for Authorized Improvements in accordance with the Annexation and Development Agreement provisions for Insurance, Indemnity and Performance and Payment bond requirements.

**Section 3.05. Maintenance of Project, Warranties**

Unless otherwise provided for herein or in the Annexation and Development Agreement, the Owner shall maintain each Authorized Improvement constructed by Owner (or Segment thereof) in good and safe condition until such Authorized Improvement (or Segment thereof) is accepted by the City or the Owner's Association, as applicable. The City's acceptance of Authorized Improvements shall be in accordance with the City standard rules and procedures for the acceptance of subdivision improvements as modified by the Annexation and Development Agreement. Prior to such acceptance, the Owner shall be responsible for performing any required maintenance on such Authorized Improvement. On or before the acceptance by the City of an Authorized Improvement (or Segment thereof), the Owner shall assign to the City all of the Owner's rights in any warranties, guarantees, maintenance obligations or other evidences of contingent obligations of third persons with respect to such Authorized Improvement (or Segment thereof). A two year maintenance bond shall be required as provided for in the Annexation and Development Agreement.

**Section 3.06. Sales and Use Tax Exemptions**

(a) The City will use best efforts to provide such certifications to the Owner and/or to suppliers and contractors as may be reasonably requested by Owner regarding exemptions from sales and use taxes under Texas Tax Code Section 151.309, but makes no representation or warranty that such exemptions will be applicable.

(b) The City and the Owner shall cooperate in structuring the construction contracts for the Authorized Improvements to comply with requirements (including those set forth in 34. Tex. Admin. Code, sec. 3.291) for exemption from sales and use taxes.

### **Section 3.07. Regulatory Requirements**

(a) The Owner shall be responsible for the costs of designing, constructing, and obtaining the City's or Owner's Association, as applicable, acceptance of the Authorized Improvements, in accordance with applicable local, state, and federal regulations, the City-approved plans and specifications, and Good Engineering Practices.

(b) The Owner will request bids from at least three (3) independent, competent contractors for the construction of the Authorized Improvements and provide copies of the bids to the City. The Authorized Improvements shall be bid based on the construction plans and specifications approved by the City.

(c) The City Construction Representative will cooperate with the Owner to the extent reasonably possible for proper engineering review, comment, and revision on the review and approval of the engineering, design, plans, and specifications of all Authorized Improvements submitted by the Owner.

### **Section 3.08. Owner's Association**

(a) The Owner will create one or more home owners associations for the Property (collectively the "**Owner's Association**"), and shall establish bylaws, rules, regulations and restrictive covenants (collectively the "**Association Regulations**") to assure the Owner's Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Owner's Association pursuant to this Section and the Annexation and Development Agreement. The Owner's Association will have binding, continuing responsibility for the maintenance, repair and operation of the HOA Maintained Improvements maintained by the Owner's Association. The Association Regulations will establish periodic Owner's Association dues and assessments, to be charged and paid by the lot owners within the Property, which are and will be sufficient to maintain the HOA Maintained Improvements. The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the HOA Maintained Authorized Improvements, and to provide funds required for the management and operation of the Association.

(b) The Owner's Association dues and assessments required to be established, maintained and collected by the Owner's Association pursuant to this Agreement shall be in addition to, and not in lieu of, any and all other fees, charges and assessments that will be applicable to the Property.

## **ARTICLE IV. PAYMENT FOR PUBLIC IMPROVEMENTS**

### **Section 4.01. Overall Requirements**

(a) Except as otherwise provided in the Wastewater Agreement or Offsite Road and Trail Agreement, the City shall not be obligated to provide funds for any Authorized Improvement except from the proceeds of the PID Bonds or from Special Assessments. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds available for the payment

of the Costs of the Authorized Improvements to be constructed for or acquired by the City or the Owner's Association will be sufficient for the construction or acquisition of all of those particular Authorized Improvements. The Parties anticipate that Cost to construct the Authorized Improvements may be greater than the proceeds of the PID Bonds and reimbursements available for Authorized Improvements and any shortfalls with respect to Costs (not to be funded by the City pursuant to the Wastewater Agreement or Offsite Road and Trail Agreement) incurred by Owner will be funded by the Owner.

(b) Owner may enter into agreements with one or more real estate owners or builders to construct certain Authorized Improvements (each such Owner, a "**Co-Owner**") in accordance with the terms and conditions of this Agreement. The Owner may submit Costs paid for by a Co-Owner and obtain reimbursement of such Costs on behalf of and to be paid to Owner or to such Co-Owner, at Owner's discretion.

(c) The Authorized Improvements are intended to be constructed pursuant to this Agreement and paid for by the Owner prior to the issuance of PID Bonds intended to fund such Authorized Improvements. Such funding of the Authorized Improvements will be governed generally by the terms of this Section 4.01, Section 4.02 (for Improvement Area #1 Authorized Improvements) and Section 4.03 (for Future Improvement Area Authorized Improvements) of this Agreement.

(d) In the event that the City adopts an Assessment Ordinance or ordinances levying Special Assessments without the intention to immediately issue PID Bonds secured by such Special Assessments, the City hereby undertakes to establish a fund corresponding to each such Assessment Ordinance, to be segregated from all other City funds, into which the City shall deposit Special Assessment Revenues corresponding to such Assessment Ordinance (each, a "**PID Reimbursement Fund**").

(e) Until PID Bonds are issued, the Special Assessments (to be levied and collected as provided below) will reimburse the Owner for Costs incurred in connection with the applicable Authorized Improvements until the PID Bonds are issued in an amount necessary to reimburse Owner for the Costs of the Improvement Area #1 Authorized Improvements or Future Improvement Area Authorized Improvements, as applicable, less any amounts already reimbursed to Owner out of the PID Reimbursement Fund as provided in the following Sections. In such event, until PID Bonds for a given Improvement Area secured by such Special Assessments are issued, the City shall bill, collect, and deposit into the applicable PID Reimbursement Fund all such Special Assessment Revenues consisting of: (1) revenue collected from the payment of such Special Assessments (including prepayments and amounts received from the foreclosure of liens but excluding costs and expenses related to collection); (2) revenue collected from the payment of Annual Installments of such Special Assessments (excluding costs and expenses related to collection), and (3) any other revenue authorized by the PID Act and approved by the City Council.

(f) Strictly subject to the terms, conditions and requirements hereof and solely from the Special Assessment Revenues herein provided or the proceeds of PID Bonds, the Owner shall be entitled to receive payment from the PID Reimbursement Fund, until the date after the last Annual Installment is collected (the "**Maturity Date**"), a principal amount not to exceed Twenty Seven Million Five Hundred Thousand AND NO/100 DOLLARS (\$27,500,000) (the "**Reimbursement Balance**"); provided, however, that (1) the amount to be reimbursed hereunder



shall not exceed the Costs of the Authorized Improvements actually incurred by the Owner, and (2) the Reimbursement Balance shall be reduced by the costs of issuance associated with the issuance of any PID Bonds issued pursuant to this Agreement, including, but not limited to, any underwriter's discount and reserved fund deposits, if any, required by an applicable Indenture, notwithstanding that such funds shall not actually be paid by the Owner.

(g) Prior to the issuance of PID Bonds, the applicable portion of the unpaid Reimbursement Balance shall bear simple interest at the rate not to exceed five percent (5%) above the highest average index rate for tax-exempt bonds reported in a daily or weekly bond index reported in the month before the date the obligation was incurred (which date is the same as the approval by the City of the Assessment Ordinance levying the applicable Special Assessments from which the Reimbursement Balance, or a portion thereof, shall be paid) for years one through five and (2) at the rate not to exceed two percent (2%) above the highest average index rate for tax-exempt bonds reported in a daily or weekly bond index reported in the month before the date the obligation was incurred (which date is the same as the approval by the City of the Assessment Ordinance levying the applicable Special Assessments from which the Reimbursement Balance, or a portion thereof, shall be paid) for years six through the Maturity Date or until the entire Reimbursement Balance has been paid to Owner; provided, however, upon the issuance of the applicable series of PID Bonds, the interest rate due and unpaid on amounts shown on each Certification for Payment to be paid to the Owner shall be the same as the interest rate on applicable series of PID Bonds issued to finance the costs of the Authorized Improvements for which the Certification for Payment was filed. The interest rate on any portion of the outstanding Reimbursement Balance shall accrue from and be calculated (a) commencing upon the later of (a) the date of the City's adoption of an Assessment Ordinance to levy the Special Assessments within the applicable Improvement Area for the Authorized Improvements or (b) the date the City accepts (i) by recording of the final plat in association with which the applicable Authorized Improvement(s) was/were constructed or (ii) if such Authorized Improvement is not constructed in association with development of Property within the boundaries of a specific recorded final plat, the latter of (y) the date an authorized City representative provides a written notice to Owner of acceptance for City ownership and maintenance of the completed Authorized Improvement(s) and (z) the date the document conveying to City an easement in which such Authorized Improvement is located is recorded. The method for determining the interest rate for the unpaid balance of the Reimbursement Balance as set forth in this paragraph is authorized by and complies with the PID Act, including specifically subsections (e)(1) and (e)(2) of Section 372.023 of the PID Act. The principal amount of each portion of the Reimbursement Balance to be paid under each Assessment Ordinance, and the interest rate for such portion of the Reimbursement Balance, is shown on Schedule II attached to this Agreement and incorporated as a part of this Agreement for all purposes. As the City passes and approves additional Assessment Ordinances and/or issues PID Bonds, the City shall approve an updated Schedule II to this Agreement as part of the updated or amended Service and Assessment Plan. Such updated Schedule II attached to the Service and Assessment shall automatically be incorporated as part of this Agreement for all purposes as if attached hereto without any further action from the Parties.

(h) Payments from the PID Reimbursement Fund shall be applied in accordance with this Agreement. If there is a dispute over the amount of any payment, City shall nevertheless pay the undisputed amount, and the Parties shall use all reasonable efforts to resolve the disputed amount before the next payment is made; however, if the parties are unable to resolve the disputed

amount, then the City's determination of the disputed amount (as determined by the City Administrator in their reasonable and good faith judgment) shall control.

(i) After completion of construction of any of the Authorized Improvements, the Owner may submit to the City a Certification for Payment in the form attached hereto in Schedule 1, requesting payment from the PID Reimbursement Fund. Owner may submit Certification for Payments not more than once every ninety (90) days after the initial Certification for Payment. This process will continue until the Reimbursement Balance is paid in full, whether through the payments from the PID Reimbursement Fund or issuance of PID Bonds. After issuance of PID Bonds, amounts in the PID Reimbursement Fund shall be transferred to the applicable Project Fund and disbursed according to the terms hereof and the applicable Indenture.

(j) The Reimbursement Balance, as described above, is payable to the Owner and secured under this Agreement solely as described herein. No other City funds, revenue, taxes, income, or property shall be used even if the Reimbursement Balance is not paid in full at the Maturity Date.

#### **Section 4.02. Improvement Area #1 Authorized Improvements**

(a) Owner shall convey, and the City shall acquire, as more particularly described in Section 3.01 above, the given Improvement Area #1 Authorized Improvement (including Shared Authorized Improvements) for the Cost, after such Improvement Area #1 Authorized Improvement (including Shared Authorized Improvements) are completed and have been accepted by the City in accordance with all applicable law. The general process for funding of the Improvement Area #1 Authorized Improvements is outlined in herein and in Section 4.01(e)-(j) above and as follows.

(1) As soon as practical after the Owner's written request, and prior to the transfer of any Parcel to a homebuyer, the City will adopt an Assessment Ordinance which will include the initial Assessment Plan. The City will levy the Special Assessments on Improvement Area #1 for the Improvement Area #1 Authorized Improvements in accordance with the Assessment Plan and the applicable Assessment Ordinance.

(2) As requested by Owner and as set forth in the Assessment Ordinance, after the completion of some or all of the Improvement Area #1 Authorized Improvements, the City will begin collecting the Special Assessments on Improvement Area #1.

(3) Upon completion of the Improvement Area #1 Authorized Improvements (including Shared Authorized Improvements) listed on Exhibit "F", save and except those Authorized Improvements described on Exhibit "G", the City Council will consider the issuance of the Improvement Area #1 Bonds, subject to meeting the requirements and conditions stated herein, in Section 5.01, and State law, to reimburse the Owner for the Cost of those Improvement Area #1 Authorized Improvements that are complete at the time of bond issue less any amounts already reimbursed to Owner from the PID Reimbursement Fund for Improvement Area #1. Owner may provide the City a Bond Issuance Request including the anticipated completion date for the Improvement Area #1 Authorized Improvements that are to be funded by the initial Improvement Area #1 Bonds one hundred and twenty (120) days prior to the anticipated completion date for such Improvement Area #1 Authorized Improvements. The City will consider commencing the documentation and preparation for sale of the initial Improvement Area #1 Bonds

based upon receipt of such Bond Issuance Request from the Owner and approval of issuance of the PID Bonds by the City Council.

(b) In order for the Owner to receive funds from the proceeds of the Special Assessments levied on Improvement Area #1 (the “**Improvement Area #1 Special Assessments**”) and/or proceeds from the Improvement Area # 1 Bonds to reimburse the Cost of the Improvement Area #1 Authorized Improvements, the Owner shall deliver to the City, the PID Administrator and the Project Engineer (i) a Certification for Payment evidencing the Cost, (ii) evidence of the acceptance by the City of those Improvement Area #1 Authorized Improvements to be funded by the Improvement Area #1 Special Assessments or PID Bonds in question and the conveyance to the City of those Improvement Area #1 Authorized Improvements to be funded by the Improvement Area #1 Special Assessments or PID Bonds in question as described in Section 3.01 above, and (iii) an assignment of the warranties and guaranties, if applicable, to those Improvement Area #1 Authorized Improvements to be funded by the Improvement Area #1 Bonds in question, in a form reasonably acceptable to the City. Nothing herein shall prohibit Owner from being reimbursed for design costs associated with the Improvement Area #1 Authorized Improvements.

(c) After the Certification for Payment is submitted to the City, the City shall conduct a review to confirm those Improvement Area #1 Authorized Improvements to be funded by the Improvement Area #1 Special Assessments or PID Bonds in question were constructed in accordance with the plans therefor and to verify the Cost of the Improvement Area #1 Authorized Improvements specified in such Certification for Payment. The City will conduct such review within ten (10) days after the Certification for Payment is submitted to the City and the Owner will cooperate with the City in conducting each such review and provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. Upon confirmation by the City that the Improvement Area #1 Authorized Improvements to be funded by the Improvement Area #1 Special Assessments or PID Bonds in question have been constructed in accordance with the plans therefor, and verification and approval of the Cost of those Improvement Area #1 Authorized Improvements, the City shall, within thirty (30) calendar days thereafter, accept those Improvement Area #1 Authorized Improvements not previously accepted by the City, and an authorized representative of the City shall sign the Certification for Payment and forward the same to the City Administrator. The City Administrator shall then have up to ten (10) calendar days to forward the executed Certification for Payment to the Trustee for payment.

(d) At the time of the closing of any Improvement Area #1 Bonds, Owner shall, concurrently with the draw from the proceeds of the Improvement Area #1 Bonds, submit a Closing Disbursement Request, in the form attached hereto as Schedule III, to the City and the Trustee to be reimbursed for, as applicable, costs of issuance of PID Bonds and payments of costs incurred in the establishment, administration, and operation of the PID, and any other eligible items expended by the Owner. Prior to disbursement of proceeds of any Improvement Area #1 Bonds, the City will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. At the closing of any such Improvement Area #1 Bonds, Owner shall be reimbursed the amount approved in the Closing Disbursement Request from amounts on deposit in the costs of issuance account created under the Indenture and such amount shall be transferred by the Trustee for distribution to the Owner or the Owner’s designee as provided for in the Indenture.

### **Section 4.03. Future Improvement Area Authorized Improvements**

(a) The costs of the Future Improvement Area Authorized Improvements will be initially financed through this Section 4.03. The Owner shall convey, and the City shall acquire, as more particularly described in Section 3.01 above, the given Future Improvement Area Authorized Improvement for the Cost, after such Future Improvement Area Authorized Improvement is completed and has been accepted by the City. It being acknowledged that those Shared Authorized Improvements not completed at the time of the Improvement Area #1 Bond issue do not benefit Improvement Area #1 and will be funded by the Future Improvement Areas, as applicable. Each Future Improvement Area will be allocated its proportionate share of the cost of those Shared Authorized Improvements, and the concept generally described in the preceding sentence shall similarly apply to those Shared Authorized Improvements not completed at the time of any given Future Improvement Area Bonds. The general process for funding of Future Improvement Area Authorized Improvements is outlined in Section 4.01(e)-(j) above and as follows.

(1) As soon as practical after the Owner's written request, and prior to the transfer of any Parcel to a homebuyer in the applicable Future Improvement Area, the City will adopt an Assessment Ordinance levying the Special Assessments on a given Future Improvement Area for the Authorized Improvements relating to such Future Improvement Area. The City will levy and collect the Special Assessments on the applicable Future Improvement Area for the Future Improvement Area Authorized Improvements in accordance with the Assessment Plan and the applicable Assessment Ordinance.

(2) At the request of Owner, after the completion of some or all of the Future Improvement Area Authorized Improvements, the City will begin collecting the Special Assessments for the Future Improvement Area Authorized Improvements.

(3) Upon completion of the Future Improvement Area Authorized Improvements for a given Future Improvement Area and as requested by Owner, the City will consider the issuance of Future Improvement Area Bonds, subject to meeting the requirements and conditions stated in this Section, Section 5.01, and State law, to reimburse the Owner for the Cost of the Future Improvement Area Authorized Improvements for the applicable Future Improvement Area that are completed at the time the Future Improvement Area Bonds are issued less any amounts already reimbursed to Owner from the applicable PID Reimbursement Fund. Owner may provide the City a Bond Issuance Request including the anticipated completion date for the applicable Future Improvement Area Authorized Improvements that are to be funded by the given Future Improvement Area Bond issue one hundred and twenty (120) days prior to such anticipated date. The City shall commence the documentation and preparation for sale of any Future Improvement Area Bonds based upon receipt of such Bond Issuance Request from the Owner and approval by City Council to issue the Bonds.

(b) To receive funds from the proceeds of the Future Improvement Area Bonds to reimburse the Owner for the Cost of the Future Improvement Area Authorized Improvements, the Owner shall deliver to the City, the PID Administrator and the Project Engineer (i) a Certification for Payment evidencing the Cost, (ii) evidence of the acceptance by the City of the Future Improvement Area Authorized Improvements to be funded by the Future Improvement Area Bonds in question and the conveyance to the City of those Future Improvement Area Authorized Improvements to be funded by the Future Improvement Area Bonds in question as described in

Section 3.01 above, and (iii) an assignment of the warranties and guaranties, if applicable, for the Future Improvement Area Authorized Improvements to be funded by the PID Bonds in question, in a form reasonably acceptable to the City. Nothing herein shall prohibit Owner from being reimbursed for design costs associated with Future Improvement Area Authorized Improvements.

(c) After the Certification for Payment is submitted to the City, the City shall conduct a review to confirm those Future Improvement Area Authorized Improvements to be funded by the Future Improvement Area Bonds in question were constructed in accordance with the plans therefor and to verify the Cost of the Future Improvement Area Authorized Improvements specified in such Certification for Payment. The City agrees to conduct such review in an expeditious manner after the Certification for Payment is submitted to the City and the Owner agrees to cooperate with the City in conducting each such review and to provide the City with such additional information and documentation as is reasonably necessary for the City to conclude each such review. Upon confirmation by the City that Future Improvement Area Authorized Improvements to be funded by the Future Improvement Area Bonds in question have been constructed in accordance with the plans therefor, and verification and approval of the Cost of those Future Improvement Area Authorized Improvements, the City shall within thirty (30) calendar days thereafter accept those Future Improvement Area Authorized Improvements that have not been previously accepted by the City and an authorized representative of the City shall sign the Certification for Payment and forward the same to the City Administrator. The City Administrator shall then have up to ten (10) calendar days to forward the executed Certification for Payment to the Trustee for payment.

(d) At the time of the closing of any Future Improvement Area Bonds, Owner shall, concurrently with the draw from the proceeds of the Future Improvement Area Bonds, submit a Closing Disbursement Request, in the form attached hereto as Schedule III, to the City and the Trustee to be reimbursed for, as applicable, costs of issuance of PID Bonds and payments of costs incurred in the establishment, administration, and operation of the PID, and any other eligible items expended by the Owner. Prior to disbursement of proceeds of any Future Improvement Area Bonds, the City will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. At the closing of any such Future Improvement Area Bonds, Owner shall be reimbursed the amount approved in the Closing Disbursement Request from amounts on deposit in the costs of issuance account created under the Indenture and such amount shall be transferred by the Trustee for distribution to the Owner or the Owner's designee as provided for in the Indenture.

(e) The Project may be developed in phases. It is hereby acknowledged that the Future Improvement Area consists of Phase 2, 3, 4, or 5 of the Project, as depicted on Exhibit "B-3". There may be up to three (3) Future Improvement Area bond issues. A Future Improvement Area may include all or portions of Phases 2, 3, 4, or 5.

#### **Section 4.04. Segments.**

The provisions of Section 4.01, 4.02, and 4.03 above regarding funding of Authorized Improvements also apply to Segments of those Authorized Improvements.

#### **Section 4.05. Qualified Tax-Exempt Status.**

(a) In any calendar year in which PID Bonds are issued, the Owner agrees to pay the City additional costs (“**Additional Costs**”) the City may incur in the issuance of City obligations (the “**City Obligations**”) as described in this Section if the City Obligations are deemed not to qualify for the designation of “qualified tax-exempt obligations” (“**QTEO**”) as defined in section 265(b)(3) of the Internal Revenue Code of 1986, as amended, as a result of the issuance of PID Bonds by the City in any given year. The City agrees to deposit all funds for the payment of such Additional Costs received under this Section into a segregated account of the City, and such funds shall remain separate and apart from all other funds and accounts of the City until December 31 of the calendar year in which the PID Bonds are issued, at which time the City is authorized to utilize such funds for any purpose permitted by law; if the City does not issue the PID Bonds by the end of the calendar year in which the Additional Costs would be incurred by the City in the issuance of the City Obligations, the City will refund to the Owner the Additional Costs paid by the Owner in such calendar year within ten (10) business days after the end of such calendar year. Additionally, the City will provide the Owner on an annual basis no later than December 15th each year the projected amount of City Obligations to be issued in the upcoming year based on its annual budget process.

(b) In the event the City issues PID Bonds prior to the issuance of City Obligations, the City, with assistance from its Financial Advisor, shall calculate the estimated Additional Costs based on the market conditions as they exist approximately forty-five (45) days prior to the pricing of the PID Bonds using independent third party public pricing information to the date of the pricing of the PID Bonds (the “**Estimated Additional Costs**”), the City shall provide a written invoice to the Owner, and the Owner shall have 10 days to review and provide input on the calculation to the City. The Owner shall pay such Estimated Additional Costs to the City on or before the earlier of (i) ten (10) business days after the date of the City’s invoice or (ii) fifteen (15) business days prior to pricing the PID Bonds. The City shall not be required to price or sell any issue of PID Bonds until the Owner has paid to the City the Estimated Additional Costs related to the PID Bonds then being issued. The Estimated Additional Costs are an estimate of the increased cost to the City to issue its City Obligations as non-QTEO. Upon the City’s issuance of the City Obligations, the City’s Financial Advisor shall calculate the actual Additional Costs to the City of issuing its City Obligations as non-QTEO (the “**Actual Increased Costs**”). The City will, within five (5) business days after the issuance of the City Obligations, notify the Owner of the Actual Increased Costs. In the event the Actual Increased Costs are less than the Estimated Additional Costs, the City will refund to the Owner the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City’s notice to the Owner of the Actual Increased Costs. If the Actual Increased Costs are more than the Estimated Additional Costs, the Owner will pay to the City the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City’s notice to the Owner of the Actual Increased Costs. If the Owner does not pay the City the difference between the Actual Increased Costs and the Estimated Additional Costs within ten (10) business days of the date of the City’s notice to the Owner of the Actual Increased Costs, the Owner shall not be paid any reimbursement amounts from the PID Reimbursement Fund related to the PID or the Project until such payment is made in full. If the City does not issue the City Obligations by the end of the calendar year in which PID Bonds are issued, the City will refund to the Owner the Additional Costs paid by the Owner in such calendar year within ten (10) business days after the end of such calendar year.

(c) In the event the City issues City Obligations prior to the issuance of PID Bonds, the City's Financial Advisor shall calculate the estimated Additional Costs based on the market conditions as they exist approximately forty-five (45) days prior to the date of the pricing using independent third party public pricing information of the City Obligations (the "**Estimated Additional City Obligation Costs**"), the City shall provide a written invoice to the Owner, and the Owner shall have 10 days to review and provide input on the calculation to the City. In the event Owner intends to issue PID Bonds in that calendar year, the Owner shall pay such Estimated Additional City Obligation Costs to the City at least fifteen (15) days prior to pricing the City Obligations. If the Owner has not paid the Estimated Additional City Obligation Costs to the City by the required time, the City, at its option, may elect to designate such City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year. The Estimated Additional City Obligation Costs are an estimate of the increased cost to the City to issue its City Obligations as non-QTEO. Upon the City's issuance of the City Obligations, the City's Financial Advisor shall calculate the actual Additional Costs to the City of issuing its City Obligations as non-QTEO (the "**Actual Increased City Obligation Costs**"). The City will, within five (5) business days after the issuance of the City Obligations, notify the Owner of the Actual Increased City Obligation Costs. In the event the Actual Increased City Obligation Costs are less than the Estimated Additional City Obligation Costs, the City will refund to the Owner the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Owner of the Actual Increased City Obligation Costs. If the Actual Increased City Obligation Costs are more than the Estimated Additional City Obligation Costs, the Owner will pay to the City the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Owner of the Actual Increased City Obligation Costs. If the Owner does not pay the City the difference between the Actual Increased City Obligation Costs and the Estimated Additional City Obligation Costs within ten (10) business days of the date of the City's notice to the Owner of the Actual Increased City Obligation Costs, the Owner shall not be paid any reimbursement amounts from the PID Reimbursement Fund related to the PID or the Project until such payment is made in full.

(d) To the extent any developer(s) or the Owner(s) (including the Owner, as applicable) has (have) paid Additional Costs for any particular calendar year, any such Additional Costs paid subsequently by a developer or Owner(s) (including the Owner, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or Owner(s) (including the Owner, as applicable) as necessary so as to put all developers and the Owner so paying for the same calendar year in the proportion set forth in subsection (e), below, said reimbursement to be made by the City within ten (10) business days after its receipt of such subsequent payments of such Additional Costs.

(e) The City shall charge Additional Costs attributable to any other developer or the Owner on whose behalf the City has issued debt in the same manner as described in this Section 4.05, and the Owner shall only be liable for its portion of the Additional Costs under this provision, and if any Additional Costs in excess of the Owner's portion had already been paid to the City under this provision, then such excess of Additional Costs shall be reimbursed to the Owner. The portion owed by the Owner shall be determined by dividing the total bond proceeds from any debt issued on behalf of the Owner in such calendar year by the total bond proceeds from any debt issued by the City for the benefit of all developers or Owner(s) (including the Owner) in such calendar year.

## ARTICLE V. PID BONDS

### Section 5.01. Issuance of PID Bonds.

(a) Subject to the terms and conditions set forth in this Article, if the Owner provides a Bond Issuance Request, the City will consider the issuance of the PID Bonds to pay for the Costs with respect to the Authorized Improvements as contemplated by Article IV. The City will consider the issuance of PID Bonds within four (4) to six (6) months after receiving a Bond Issuance Request from the Owner provided that Owner can reasonably demonstrate to the City and its Financial Advisors that (i) the Future Bond Test has been satisfied, if applicable, and (ii) there is sufficient security for the PID Bonds as set forth in subsection 2.05(d) above, based upon the market conditions existing at the time of such proposed sale. The City shall promptly obtain the Appraisal and any other financial analysis required hereby. The Authorized Improvements anticipated to be constructed and funded in connection with the PID Bonds shall be described in the initial Assessment Plan.

(b) The aggregate principal amount of PID Bonds required to be issued hereunder shall not exceed an amount sufficient to fund: (i) the Costs of the Authorized Improvements, (ii) required reserves, including any amounts contemplated pursuant to Section 5.01(i) herein, (iii) the PID Reserve Fund and all or a portion of the first year's installment of the Administrative Fund (as will be defined in the Indenture), and (iv) any costs of issuance for the PID Bonds.

(c) The final maturity for each series of PID Bonds secured by a given Improvement Area shall occur no later than 30 fiscal years from the issuance date of the first series of PID Bonds secured by the Improvement Area in question.

(d) Owner may request the issuance of the PID Bonds, subject to the condition that the maximum aggregate par amount of all of the PID Bonds shall not exceed \$27,500,000.

(e) The targeted annual PID installment equivalent tax rate (inclusive of total debt service, prepayment and delinquency reserve fund contributions, and Administrative Expenses) at the time the Special Assessments are levied is \$0.73 per \$100.00 of valuation (based on estimated build out values at the time the Assessment Plan is adopted and as agreed upon by the Owner and the City). The Owner and the City understand that it is the intent to have a fixed assessment for all the assessed property categories throughout the District regardless of annual PID installment equivalent tax rate metrics as recommended by the City's consultants or PID Administrator. As a result, the equivalent tax rate may be adjusted accordingly.

(f) The City will (i) select the underwriter for each series of PID Bonds, (ii) determine credit criteria; (iii) investor suitability; (iv) structure of each series of PID Bonds; and (v) the continuing disclosure requirements for each series of PID Bonds, each with input from the Owner, but in every instance the City shall make the final decision regarding all terms and matters related to the issuance and sale of a series of PID Bonds.

(g) PID Bonds are not required to be issued under this Article V unless (i) the statutory requirements set forth in Chapter 372 of the Texas Local Government Code have been satisfied; (ii) the City shall receive at the time of issuance an opinion of counsel selected by the City stating in effect that the PID Bonds are legal and valid under Texas law and that all preconditions to their



issuance under State law have been satisfied, as well as the approving opinion of the Attorney General of the State of Texas as required by the PID Act; and (iii) the water infrastructure is in place to serve the Phase of the Project for which the PID Bonds are requested.

(h) The City agrees to use its best efforts to issue the PID Bonds such that interest on the PID Bonds is excludable from the gross income of the owners thereof for federal income tax purposes, including providing such certifications as may be required by the City's Bond Counsel with respect to the City's ongoing compliance with the applicable requirements of federal tax law.

(i) For any PID Bonds issued by the City, there will be no capitalized interest set aside from the gross bond proceeds except for any interest due on the PID Bonds subsequent to the issue date but prior to the date the initial Annual Installment is due.

(j) Prior to the levy of Special Assessments and issuance of PID Bonds the Owner must be current on all taxes, Special Assessments, fees and not in default under the Annexation and Development Agreement, the Offsite Road and Trail Agreement, the Wastewater Agreement or the PDD #5 Ordinance, including information required from Owner for timely disclosures as required by the applicable continuing disclosure agreements.

(k) The foregoing requirements apply to each series of PID Bonds issued.

#### **Section 5.02. Project Fund**

The City hereby covenants and agrees that the Indenture will establish a Project Fund as a separate fund to be held by the Trustee under the Indenture. The portion of the proceeds of the PID Bonds issued to pay Costs of Authorized Improvements and Bond Issuance Costs shall be deposited upon issuance into separate accounts within the Project Fund, as provided in the Indenture.

#### **Section 5.03. Sale of PID Bonds.**

The PID Bonds, when issued by the City, shall be marketed and sold as determined by the City with the cooperation and assistance of the Owner in all respects with respect to the preparation of marketing documents, such as preliminary and final official statements.

#### **Section 5.04. Phased Issuance of Debt.**

As previously stated, the proposed bond issuance program is anticipated to entail up to four (4) series of Improvement Area Bond financings that will reimburse Owner for the costs of the Authorized Improvements required for the development of the Project. This financing will be undertaken in phases to coincide with the private investment and development of the Authorized Improvements.

#### **Section 5.05. Dissolution Upon Non-Issuance of PID Bonds.**

Owner's predecessor-in-interest has petitioned the City to dissolve the District if no Special Assessments have been levied by October 17, 2024, so long as the City has made reasonable efforts to levy the Special Assessments in accordance with the terms hereof. Contemporaneously with

the creation of the District, Owner's predecessor-in-interest provided the Petition for Dissolution of the District, which is being held in escrow pursuant to the Escrow Agreement.

## **ARTICLE VI. REPRESENTATIONS AND WARRANTIES**

### **Section 6.01. Representations and Warranties of City.**

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

(a) that the City is a municipal corporation and political subdivision of the State of Texas, duly incorporated, organized and existing under the Constitution and general laws of the State, and has full legal right, power and authority under the PID Act and other applicable law (i) to enter into, execute and deliver this Agreement, (ii) to adopt any Assessment Ordinance, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

### **Section 6.02. Representation and Warranties of Owner**

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

(a) The Owner represents and warrants that the Owner is a limited liability company duly organized and validly existing under the laws of the State of Ohio, is authorized to conduct business and enter into and perform under this Agreement in compliance with the laws of the State of Texas, is in compliance with the laws of the State of Texas, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) The Owner represents and warrants that the Owner has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered on behalf of the Owner.

(c) The Owner represents and warrants that this Agreement is valid and enforceable obligation of the Owner and is enforceable against the Owner in accordance with its terms, subject to bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) The Owner covenants that once it commences construction of a Segment it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such Segment of the Authorized Improvements to be completed in accordance with this Agreement.

(e) The Owner covenants that it will not commit any act in, upon or to the Property or the Project in violation of any law, ordinance, rule, regulation, or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Property or the Project.

(f) The Owner represents and warrants that (i) it will not request payment from the City for the acquisition of any Authorized Improvements that are not part of or benefit the Project, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to payment requests.

(g) Until the final maturity date of the PID Bonds, the Owner covenants to maintain proper books of record and account for the Authorized Improvements and all costs related thereto. The Owner covenants that such accounting books will be maintained in accordance with sound accounting practices, and will be available for inspection by the City or its agent at any reasonable time during regular business hours upon at least 72 hours' notice.

## **ARTICLE VII. DEFAULT AND REMEDIES**

(a) A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

(b) Before any failure of any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify, in writing, the Party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice, subject, however, in the case of non-monetary default, to the terms and provisions of subparagraph (c). Upon a breach of this Agreement, the non-defaulting Party in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained (and/or an action for mandamus as and if appropriate). Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Article VII or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party. Notwithstanding any provision contained herein to the contrary, the Owner shall not be required to construct any portion of the Authorized Improvements (or take any other action related to or in furtherance of same) while the City is in default under this Agreement. Each party shall be responsible for the expenses incurred by such party in connection with the institution of legal proceedings, including, without limitation, court costs and attorney fees.

(c) Notwithstanding any provision in this Agreement to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, widespread pestilence, fire or other casualty, shortage of materials, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or tornadoes, labor action, strikes, changes in the law affecting the obligations of the Parties hereunder, or similar acts), the time for such performance shall be extended by the amount of time of the delay directly caused by and

relating to such uncontrolled circumstances. The Party claiming delay of performance as a result of any of the foregoing “force majeure” events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a “force majeure” event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Article.

## **ARTICLE VIII. GENERAL PROVISIONS**

### **Section 8.01. Notices.**

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

If to City:                   City of Dripping Springs  
                                  Attn: City Administrator  
                                  P.O. Box 384  
                                  511 Mercer Street  
                                  Dripping Springs, Texas 78641

With a copy to:           City of Dripping Springs  
                                  Attn: City Attorney  
                                  511 Mercer Street  
                                  Dripping Springs, Texas 78620

If to Owner:               M/I Homes of Austin, LLC  
                                  Attn: Royce Rippy  
                                  7600 N. Capital of Texas Hwy Bldg. C Suite 250  
                                  Austin, Texas 78731  
                                  rrippy@mihomes.com

With a copy to:           Metcalf Wolff Stuart & Williams, LLP  
                                  Attn: Steven C. Metcalfe  
                                  221 W. 6th, Suite 1300  
                                  Austin, Texas 78701  
                                  [smetcalfe@mwswtexas.com](mailto:smetcalfe@mwswtexas.com)

### **Section 8.02. Fee Arrangement**

(a) The Owner agrees that it will pay all of the City’s costs and expenses (including the City’s third party advisors and consultants) related to the creation of the District. The City will pay costs and expenses related to the issuance of any PID Bonds (including, but not limited to legal

and financial advisors, underwriters, District administrators, bond documentation, trustee, paying agent, printing, etc.). The Owner agrees that it will pay for certain costs and expenses required by the City and related to the issuance of non-refunding PID Bonds such as, but not limited to, appraisals, engineers reports, market studies, etc. Prior to closing of any non-refunding PID Bonds, the Owner shall submit to the City invoices and other supporting documentation evidencing costs related to the creation of the District and the issuance of non-refunding PID Bonds; and the City will pay or reimburse the Owner for these costs, as applicable, from proceeds of the PID Bonds. The City is not responsible for payment of the Owner's third party legal and financial consultants. Further, prior to the sale of any PID Bonds, the City will provide the Owner with a reasonable market rate budget of all costs and expenses of the City that are to be reimbursed by the Owner or from proceeds of such PID Bonds.

(b) Pursuant to a separate agreement, the City may contract with a third party to serve as the PID Administrator and to administer the PID after Closing. The Administrative Expenses shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the Assessment Plan.

#### **Section 8.03. Assignment**

(a) This Agreement and the rights and obligations of Owner hereunder may be assigned by Owner to an affiliate of Owner without the consent of the City, provided that the assignee assumes all of the obligations of Owner hereunder.

(b) For assignments to other than an affiliate as provided above, Owner may, at its sole and absolute discretion, assign this Agreement from time to time to any party that (i) does not owe delinquent taxes or fees to the City, (ii) is not in material default (beyond any applicable notice and cure period) under any development agreement with the City and (iii) has the experience, expertise and the financial capacity and ability to perform the duties or obligations so assigned under this Agreement. Owner shall provide the City sixty (60) days prior written notice of any such assignment. If the City has objections to such assignment satisfying the requirements described above, the City shall provide written notice of such objections to the Owner within ten (10) days of receiving the assignment notice from Owner. Owner will not be released from its obligations under this Agreement if the City objects to the assignment as described above and such objections are not resolved by and between Owner and the City; provided, however, the City shall not unreasonably withhold Owner's release from its obligations under this Agreement.

(c) Upon such assignment, Owner shall be deemed to be automatically released of any obligations under this Agreement.

(d) Any assignment must be in writing, set forth the assigned rights and obligations and be executed by the proposed assignee. A copy of the assignment document must be delivered to the City.

(e) The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Owner shall not be sufficient to constitute an assignment of the rights or obligations of Owner hereunder.

#### **Section 8.04. Construction of Certain Terms**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

- (a) Words importing a gender include either gender.
- (b) Words importing the singular include the plural and vice versa.
- (c) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or novation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or novation is permitted by and in accordance with that applicable document.
- (d) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.
- (e) A reference to any Party in a particular capacity excludes such Party in any other capacity or individually.
- (f) All references in this Agreement to designated “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Agreement. All references in this Agreement to “Exhibits” are to the designated Exhibits to this Agreement.
- (g) The words “herein,” “hereof,” “hereto,” “hereby,” “hereunder,” and other words of similar import refer to this Agreement as a whole and not to the specific Section or provision where such word appears.
- (h) The words “including” and “includes,” and words of similar import, are deemed to be followed by the phrase “without limitation.”
- (i) Unless the context otherwise requires, a reference to the “Property,” the “Authorized Improvements,” or the “District” is deemed to be followed by the phrase “or a portion thereof.”
- (j) Every “request,” “order,” “demand,” “direction,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” “approval,” “waiver,” “identification,” or similar action under this Agreement by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.
- (k) The Parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Agreement. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Agreement.

**Section 8.05.** Table of Contents; Titles and Headings

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

**Section 8.06.** Amendments.

This Agreement may be amended, modified, revised or changed by written instrument executed by the Parties.

**Section 8.07.** Time

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

**Section 8.08.** Counterparts

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

**Section 8.09.** Entire Agreement

This Agreement contains the entire agreement of the Parties.

**Section 8.10.** Severability; Waiver

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

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

**Section 8.11.** Owner as Independent Contractor

In performing under this Agreement, it is mutually understood that the Owner is acting as an independent contractor, and not an agent of the City.

**Section 8.12.** Supplemental Agreements

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are included in the Assessment Plan, any Assessment Ordinance, PID Bond Ordinance and Indenture.

**Section 8.13.** City’s Acceptance of Authorized Improvements.

The City hereby agrees that it will not unreasonably withhold the final acceptance of any of the Authorized Improvements and will work with the Owner in good faith to expedite review and acceptance of such Authorized Improvements.

**Section 8.14.** No Boycott Israel

The Owner, BobWhite, and Tri Pointe (collectively, the “**Verifying Party**”) hereby verify, for purposes of Section 2271 of the Texas Government Code, that at the time of execution and delivery of this Agreement, neither the Verifying Party, nor any parent company, wholly- or majority-owned subsidiaries or affiliates of the same, if any, boycotts Israel or, to the extent this Agreement is a contract for goods or services, will boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycotts Israel” and “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Verifying Party understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Verifying Party within the meaning of SEC Rule 405, 17. C.F.R. § 230.405, and exists to make a profit.

**Section 8.15.** No Foreign Terrorist Organization

The Verifying Party hereby verifies that, neither the Verifying Party, nor any parent company, wholly- or majority-owned subsidiaries or affiliates of the same, if any, are companies identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudanlist.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/ftolist.pdf>. The foregoing verification is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Verifying Party and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the same, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Verifying Party understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Verifying Party within the meaning of SEC Rule 405, 17. C.F.R. § 230.405, and exists to make a profit.

**Section 8.16.** No Firearm Entity Boycott

Pursuant to Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Verifying Party hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance or directive that discriminates against a firearm entity or



firearm trade association and, to the extent this Agreement is a contract for goods or services, will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” (A) means, with respect to the entity or association, to (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. The Verifying Party understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Verifying Party within the meaning of SEC Rule 405, 17. C.F.R. § 230.405, and exists to make a profit.

#### **Section 8.17. No Energy Company Boycotts**

Pursuant to Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Verifying Party hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, to the extent this Agreement is a contract for goods or services, will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. The Verifying Party understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Verifying Party within the meaning of SEC Rule 405, 17. C.F.R. § 230.405, and exists to make a profit.

#### **Section 8.18. Disclosure of Interested Parties.**

Pursuant to Section 2252.908(c)(4), Texas Government Code, the Owner hereby certifies that it is a publicly traded business entity and is not required to file a Certificate of Interested Parties Form 1295 related to this Agreement.

Pursuant to Section 2252.908(c)(4), Texas Government Code, Tri Pointe hereby certifies

that it is a publicly traded business entity and is not required to file a Certificate of Interested Parties Form 1295 related to this Agreement.

Submitted herewith is a completed Form 1295 in connection with BobWhite’s participation in the execution of this Agreement generated by the Texas Ethics Commission’s (the “**TEC**”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “**Form 1295**”). The City hereby confirms receipt of the Form 1295 from BobWhite, and BobWhite agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. BobWhite and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by BobWhite; and, neither the City nor its consultants have verified such information.

### **Section 8.19. Exhibits**

The following exhibits are attached to and incorporated into this Agreement for all purposes:

- Exhibit A - Definitions
- Exhibit B - Property
- Exhibit B-1 - Phasing Map
- Exhibit B-2 - Improvement Area #1
- Exhibit B-3 - Future Improvement Area
- Exhibit C - Private Improvements
- Exhibit D - Intentionally Omitted
- Exhibit E - Intentionally Omitted
- Exhibit F - Improvement Area #1 Authorized Improvements
- Exhibit G - Authorized Improvements for which Acceptance by City  
Prior to Bond Issuance Request Not Required
- Schedule I - Form of Certification for Payment
- Schedule II - Reimbursement Balances
- Schedule III - Form of Closing Disbursement Request

**CITY OF DRIPPING SPRINGS,**  
a political subdivision of the State of Texas

By: \_\_\_\_\_  
Name: Bill Foulds, Jr.  
Title: Mayor

**STATE OF TEXAS**       §  
                                  §  
**COUNTY OF HAYS**     §

**THIS INSTRUMENT** was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2022, by Bill Foulds, Jr., Mayor of the City of Dripping Springs, Texas, a political subdivision of the State of Texas, on behalf of said municipality.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

[Signatures Continue on Next Page]

**M/I Homes of Austin, LLC**, an  
Ohio limited liability company

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

Name: William G. Peckman

Title: Area President

**STATE OF TEXAS** §

§

**COUNTY OF** \_\_\_\_\_ §

**THIS INSTRUMENT** was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2022, by William G. Peckman, Area President of M/I Homes of Austin, LLC, an Ohio limited liability company, on behalf of said company.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

The Consenting Party is executing this Agreement solely due to the fact that it is an owner of a portion of the Property and, except for its obligations expressly set forth under the Landowner’s Certificate, Consenting Party has no rights, duties or obligations under this Agreement.

**CONSENTING PARTY:**

**Tri Pointe Homes Texas, Inc.**, a Texas corporation formerly known as Trendmaker Homes, Inc.

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

Name: Bryan Havel

Title: Division President - Austin

**STATE OF TEXAS** §

§

**COUNTY OF \_\_\_\_\_** §

**THIS INSTRUMENT** was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2022, by Bryan Havel, Division President - Austin of Tri Pointe Homes Texas, Inc., a Texas corporation, on behalf of said corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

The Consenting Party is executing this Agreement solely due to the fact that it is an owner of a portion of the Property and, except for its obligations expressly set forth under the Landowner's Certificate, Consenting Party has no rights, duties or obligations under this Agreement.

**CONSENTING PARTY:**  
**BobWhite Investments, LP,**  
a Texas limited partnership

By: BobWhite GP, LLC, a Texas  
limited liability company

Its: General Partner

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

Name: Sarah D. Henline

Title: General Manager

**STATE OF TEXAS** §

§

**COUNTY OF \_\_\_\_\_** §

**THIS INSTRUMENT** was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2022, by Sarah D. Henline, General Manager of BobWhite GP, LLC, a Texas limited liability company and the General Partner of BobWhite Investments, LP, a Texas limited partnership, on behalf of said partnership.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas