

**CITY OF FAIR OAKS RANCH /RALPH FAIR LLC
WATER SUPPLY AGREEMENT**

This Water Supply Agreement (“Agreement”) is made and entered into by and between Ralph Fair LLC, its successors and assigns (“Owner”) and the City Of Fair Oaks Ranch, Texas, a municipal corporation (“City”).

RECITALS

WHEREAS, Owner owns a certain 19.02+/- acre tract of real property (the “Property”) more fully described in Exhibit “A” attached hereto and incorporated herein; and

WHEREAS, Owner petitioned to have the Property annexed into the corporate limits of the City, and the City annexed the property on May 15, 2008; and

WHEREAS, the City has requested that Owner enter into this Agreement to memorialize certain agreements and commitments by the Owner with respect to its planned development of the Property and the provision of water services to the Property; and

WHEREAS, Owner has requested that the City enter into this Agreement to memorialize certain agreements and commitments by the City with respect to the development of the Property and the provision of water services to the Property; and

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

**I.
AUTHORITY AND TERM**

A. Authority. The City’s execution of this Agreement is authorized by The City Council of the City of Fair Oaks Ranch and constitutes a valid and binding obligation of the City. Owner’s execution and performance of this Agreement constitutes a valid and binding obligation of Owner as the Owner proceeds with the development of the Property. The City acknowledges that Owner is acting in reliance upon the City’s performance of its obligations under this Agreement in making its decision to commit substantial resources and money to the development of the Property.

B. Term. This Agreement shall become enforceable upon execution by the City and Owner. This Agreement shall terminate on the 15th anniversary of its execution unless extended by mutual agreement of the parties, or upon full build-out of the property.

**II.
LAND USE PLAN**

Consistent with the existing general land uses that exist within the City, it is the intent of Owner to design a large lot residential subdivision whereby the actual location and design of its roadway system will comprise local streets only.

A. Lot Summarization. As of the date hereof, it is anticipated that the Property when developed will contain the following approximate types and sizes of lots to be allocated to the various builders:

- | | | |
|-------------------|--------------------|-------------|
| (1) Single Family | maximum of 13 lots | 19.02 Acres |
| (2) Commercial | 2 lots | |

III. OBLIGATIONS OF THE PARTIES

For and in consideration of the mutual promises, covenants, obligations, and benefits described in this Water Supply Agreement, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and The City agree as follows:

A. Potable Water Service. The City of Fair Oaks Ranch will provide treated water from the City's Water Production, Storage, and Distribution system; as such system may be expanded or modified from time to time. The water to be delivered may be from any source or combination of sources that may be available to the City including, without limitation, water from Canyon Reservoir under the City's Western Canyon Water supply contract and or from the City's Trinity Aquifer well fields.

B. Extension of Utilities. Owner will extend utilities from their present locations to the boundaries of the property at its sole expense and pay for any increase in size of all appurtenances necessary to provide utility service to the lots within the Property at the level required in the City of Fair Oaks Ranch Subdivision Ordinance.

C. Offsets and Credits. This Agreement shall constitute an application for offsets or credits for the Contributions in Aid of Construction, provided by the owner to facilitate utility service to the Property, against impact fees due for the property. The City shall credit the amount of the Contributions in Aid of Construction provided by the Owner against the amount of Impact Fees due for the Property

D. Water Service Capacity. The City agrees to reserve water service capacity to the Property for 15 Living Unit Equivalents ("LUEs"), to support the Single Family and Commercial lots. The City of Fair Oaks Ranch shall reserve 9 acre-feet of water to serve this development (Annual Reservation). The City shall provide an initial annual commitment (Capacity Reservation) of 2 acre-feet of water. The annual commitment may be increased in January of each year up to a maximum total of 9 acre-feet.

E. Water Replacement Charge. Upon execution of this Agreement, Owner shall pay to City of Fair Oaks Ranch a one-time charge ("Owner's Water Replacement Charge") equal to the product of Owner's Water Reservation (9 acre feet) times \$275, or Two Thousand Four Hundred Seventy-five Dollars (\$2,475.00).

F. Contribution in Aid of Construction. Upon execution of this Agreement, Owner shall pay to City of Fair Oaks Ranch a one-time charge ("Owners Contribution in Aid of Construction") equal to the product of Property's total potential residential customers (15 LUE's) times \$1,669.58, or Twenty-five Thousand Forty-three Dollars and Seventy Cents (\$25,043.70). Owner will be refunded the fees quarterly for each building permit issued and, payment of \$1669.58 impact fee has been received by the City from the homebuilder.

G. Water Reservation fees. Owner shall, on or about the 30th day after the date of execution of this agreement, begin paying the monthly water reservation fee. Such fee shall be the monthly rate the City of Fair Oaks Ranch pays for the reservation of an acre foot of water for that year and shall be adjusted annually to be equal to the City of Fair Oaks Ranch's cost for the reservation of water necessary to provide for the development of the Property. This fee is equal to the product of 1/12th of the annual Reservation times the Firm Water Rate in effect during that month. The initial Owner's Water Reservation Charge will be \$75.00 per month based on the current rate of \$100 per acre-foot per year and the Owners annual reservation of 9 acre-feet per year. The Owner shall continue to pay said reservation fee until such time as all of the 15 LUE's within the Property have

been developed and connected to the City's water system minus those LUE's which have been connected (water meter has been set for domestic use.) This shall continue until the development is complete.

H. Capacity Reservation Fees. Owner shall, on or about the 30th day after the date of execution of this agreement, begin paying the monthly Capacity Reservation fee. Such fee shall be the monthly rate the City of Fair Oaks Ranch pays for Capacity Reservation of an acre foot of water for that year and shall be adjusted annually to be equal to the City of Fair Oaks Ranch's cost for the reservation of water necessary to provide for the development of the Property. This fee is equal to the product of 1/12th of the annual Capacity Reservation times the Capacity Reservation Rate in effect during that month. The initial Owner's Capacity Reservation fee will be \$87.07 per month based on the current rate of \$522.41 per acre-foot per year and the Owners annual capacity reservation of 2 acre-feet per year. The Owner shall continue to pay said reservation fee until such time as all of the 15 LUE's within the Property have been developed and connected to the City's water system minus those LUE's which have been connected (water meter has been set for domestic use.) This shall continue until the development is complete.

I. Billing. The City will render bills to Owner once each month for the charges required to be paid by Owner pursuant to this Agreement. The City shall, until further notice, render such bills on or before the 10th day of each month and such bills shall be due and payable at the City's office indicated below by the 20th day of each month or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Owner, whichever is later. The City may, however, by sixty (60) days written notice change the monthly date by which it shall render bills, and all bills shall thereafter be due and payable ten (10) days after such date or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Owner, whichever is later. Owner shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall make payment to the City of Fair Oaks Ranch at its office in the City of Fair Oaks Ranch, Texas, or at such other place as the City may from time to time designate by sixty (60) days written notice.

J. Delinquency in Payment. All amounts due and owing to the City by Owner shall, if not paid when due, bear interest at the maximum rate permitted by law, provided that such rate shall never be usurious. If any amount due and owing by Owner is placed with an attorney for collection by the City, Owner shall pay to the City, in addition to all other payments provided for by this Agreement, including interest, the City's collection expenses, including court costs and attorney's fees. Owner further agrees that the City may, at its option, discontinue taking some or all actions to fulfill its obligations under this Agreement until all amounts due and unpaid are paid in full with interest as herein specified.

K. Final Plat Fee Adjustment. The city shall, upon receipt of the application for final plat, recalculate and adjust the Contribution in Aid of Construction, Water Reservation fees and the Capacity Reservation Fees to reflect the total number of LUE's to be platted on the Property. The Owner shall pay the above mentioned adjustments to the City within 30 days of final plat approval by the City.

L. Cooperation. The City agrees to reasonably cooperate with Owner in Owner's efforts to meet Owner's obligations set forth above and to assist Owner in preparing and entering into any and all instruments necessary to memorialize the future agreements of the parties pertaining to the development of the Property. The City agrees to use its best efforts and if necessary its power of condemnation, at the Owner's expense, in order to facilitate serving City utilities to the boundary of this site.

IV.
DISANNEXATION

It is expressly understood if the Owner submits a request for disannexation of the Property described in "Exhibit A" and the City Council honors said request, this Water Supply Agreement shall become null and void. All amounts paid by Owner pursuant to this Agreement shall be non-refundable.

V.
MISCELLANEOUS

A. Mutual Assistance. City and Owner will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions.

B. Representations and Warranties. The City represents and warrants to Owner that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Owner represents and warrants to City that it has the requisite authority to enter into this Agreement.

C. Default. If either the City or Owner should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default.

D. Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Owner.

E. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

F. Assignment. Except as provided, Owner may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of the City.

G. Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

Owner:	Mr. George Atallah Ralph Fair, LLC 1327 West Magnolia St. San Antonio, Texas 78201
City:	City Administrator City of Fair Oaks Ranch 7286 Dietz Elkhorn Fair Oaks Ranch, TX 78015

I. Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

J. Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Kendall County, Texas.

K. Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

L. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

M. No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the development of the Property.

N. Exhibits. The Exhibits attached hereto are incorporated by reference for all purposes.

EXECUTED in duplicate and, to be effective on 16th day of July^{31st}, 2008.

Ralph Fair, LLC



GEORGE ATALLAH

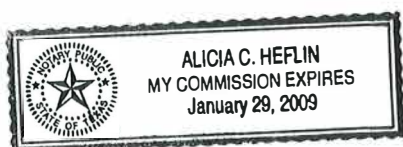
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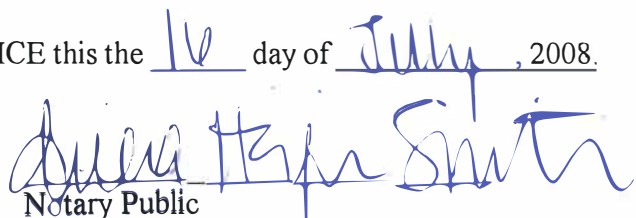
THE STATE OF TEXAS

COUNTY OF Bexar

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared George Atallah known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the Ralph Fair, LLC, and that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 16 day of July, 2008.




Notary Public

**City of Fair Oaks Ranch, Texas,
a municipal corporation**



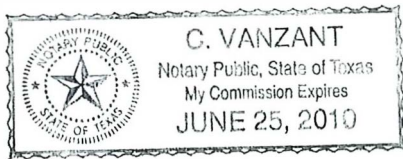
Daniel Kasprovicz, Mayor

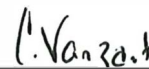
THE STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared Daniel Kasprovicz known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the City of Fair Oaks Ranch, and that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2 day of Sept, 2008.




Notary Public

APPROVED as to form:



Adolph Jacobson, City Attorney

Exhibit "A" - Metes and Bounds of 19.02 acre tract

ATTACHMENT "A"

STATE OF TEXAS #

COUNTY OF KENDALL #

Field notes of a 19.02 acre, more or less, tract of land out of the M. de la Luz Guerra Survey No. 172, Abstract No. 173 Comal County, Texas, being out of that 29.000 acre tract described in deed recorded in Document Number 98-06015680, Official Records of Comal County, Texas(ORCC); said 19.02 acre tract being more fully described as follows:

Beginning at an existing steel rod in a northwest line of F.M. 3351 for the south corner of this tract, said steel rod being the south corner of the above referenced 29.000 acre tract and being the east corner of the Neljmann Partners 149.00 acre tract as described in Document No. 2005-06009884, ORCC;

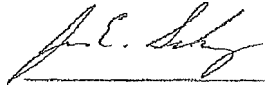
Thence, along a fence with the southwest line of this tract and the northeast line of the aforementioned 149.00 acre tract, N 51° 56' 17" W¹ 2,050.91 feet to an existing PK nail in stone, this PK nail being in a south line of the K Seven Ranches Ltd. 162.549 acre tract as described in Document No. 98-06021293, ORCC;

Thence, continuing along a fence with the north line of this tract and said south line of 162.549 acre tract, S 86° 41' 12" E 840.44 feet to an existing cotton spindle, this point being the west corner of the First Baptist Church at Fair Oaks 10.00 acre tract as described in Document No. 2003-06019442, ORCC;

Thence, with the northeast line of this tract and the southeast line of said 10.00 acre tract, S 51° 55' 57" E 1,403.75 feet a PK nail set in asphalt driveway in the aforementioned northwest line of F.M. 3351,² this steel rod being in a driveway easement as described in Document No. 2003-06019443, ORCC;

Thence, along a fence with said line of F.M. 3351, S 38° 17' 55" W 66.81 feet to an existing steel rod and S 44° 02' 11" W 414.34 feet to the place of beginning and containing 19.02 acres of land, more or less.³

I, James E. Schwarz, a Registered Professional Land Surveyor, hereby certify that the above field notes are of a survey made on the ground under my supervision on August 25 and 29, 2005.



James E. Schwarz
Registered Professional
Land Surveyor No. 4760
Job No. 05-206

Schwarz Engineering & Surveying, Inc. 723 N. Main St., Boerne, TX 78006 830-249-8907

1. This bearing, used as the bearing basis for this survey, is from deed recorded in Document No. 98-06015680, Comal County Official Records.
2. F.M. 3351 established by deed recorded in Volume 657, Page 509, Comal County Deed Records
3. A plat of this tract has been prepared