

**MUSTANG VALLEY PUBLIC IMPROVEMENT DISTRICT**

**FINANCING AGREEMENT**

**BY AND BETWEEN**

**KB HOME LONE STAR INC., A TEXAS CORPORATION**

**AND**

**THE CITY OF MANOR, TEXAS**

**MUSTANG VALLEY PUBLIC IMPROVEMENT DISTRICT  
FINANCING AGREEMENT**

This Mustang Valley Public Improvement District Financing Agreement (this “**Agreement**”), dated as of the \_\_\_ day of \_\_\_\_\_ 2024, (the “**Effective Date**”), is entered into by and between KB Home Lone Star Inc., a Texas corporation (including its Designated Successors and Assigns (defined below), the “**Owner**”), and the City of Manor, Texas (the “**City**”), a home-rule municipal corporation of the State of Texas. The Owner and the City are sometimes collectively referred to herein as the “**Parties**”, or, each individually, as the “**Party**”. Unless otherwise defined herein, capitalized terms used herein are set forth in **Exhibit “A”**, attached hereto and made a part hereof and in the Service and Assessment Plan.

RECITALS

**WHEREAS**, the Owner owns a total of approximately 136.904 acres of land more particularly described on **Exhibit “B”** attached hereto and made a part hereof (the “**Property**”);

**WHEREAS**, the Owner and the City entered into a Development Agreement, effective October 27, 2021 (as may be amended, the “**Development Agreement**”) pertaining to development matters with respect to the Property;

**WHEREAS**, it is intended that the Property will be developed as a residential mixed-use development (the “**Project**”), in accordance with the Development Agreement and the Single Family Standard zoning (as may be further amended, the “**SF-2**”), adopted by the City Council pursuant to Ordinance No. 625 on October 27, 2021;

**WHEREAS**, on June 7, 2023 the City Council passed and approved the formation of the Mustang Valley Public Improvement District pursuant to Creation Resolution No. 2023-22 (the “**District**”) in accordance with Chapter 372 of the Local Government Code (the “**PID Act**”); authorizing the creation of the District pursuant to the Act, covering approximately 136.904 contiguous acres within the City's corporate limits, which land is described in the District's Creation Resolution;

**WHEREAS**, pursuant to a Resolution adopted by the City Council on April 3, 2024, Owner and the City entered into that certain Mustang Valley Public Improvement District Reimbursement Agreement as authorized by Section 372.023(d)(l) of the PID Act (the “**Reimbursement Agreement**”);

**WHEREAS**, pursuant to the terms of this Agreement, the City has agreed that the Authorized Improvements provide a special benefit to the City and to allow financing of the Authorized Improvements conferring special benefits to the Property through the levy of Special Assessments on property located within the District;

**WHEREAS**, the Owner intends to construct or have its Designated Successors and Assigns (as defined in **Exhibit “A”** hereto) construct certain Authorized Improvements over time to serve property located in the District (or portions thereof) and cause ownership of those improvements to vest with the City in accordance with the terms and provisions of this Agreement;

**WHEREAS**, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement) levy special assessments on all or a portion of the property located within the District and issue bonds in one or more series for payment of costs associated with construction and/or acquisition of the Authorized Improvements included in a service and assessment plan to be approved by the City Council, as such plan may be amended from time to time (the “**Service and Assessment Plan**” as further defined in **Exhibit “A”** attached hereto);

**WHEREAS**, \$3.26 is the maximum aggregate Tax Equivalent Assessment Rate of Special Assessments (including the Annual Installment) plus all ad valorem taxes levied by all political subdivisions within the District, and \$12,000,000 is the maximum aggregate par amount of PID Bonds that may be issued to finance, fund or reimburse eligible Authorized Improvements constructed by the Owner;

**WHEREAS**, the City, subject to the consent and approval of the City Council, the satisfaction of all conditions for the issuance of PID Bonds and Owner’s compliance with the Development Agreement, and in accordance with the terms of this Agreement and any other legal requirements, will consider : (i) the adoption of a Service and Assessment Plan on all or a portion of the property located within the District; (ii) the adoption of any Assessment Ordinance; and (iii) authorizing the issuance of PID Bonds, in one or more series at the City’s sole discretion, for each Improvement Area for the purpose of financing the costs of the Authorized Improvements within each respective Improvement Area and paying associated costs as described herein;

**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 the Authorized Improvements, or Segments thereof, solely from Special Assessments or from the proceeds of the PID Bonds, for the costs of acquisition, construction and improvement of the Authorized Improvements or Segments thereof that are completed, dedicated to and accepted by the City subject to the terms and limitations set forth herein;

**WHEREAS**, the City agrees to pay or reimburse the Owner for the Actual Costs of the Authorized Improvements from the proceeds of PID Bonds or Special Assessment Revenues derived from levy of Special Assessments on property located within the District in accordance with the terms and provisions of this Agreement. Subject to the limitations of the PID Act and the City Charter, the City has the authority to issue, from time to time, one or more series of PID Bonds, the proceeds of which will be used to pay the costs of Authorized Improvements, or Segments thereof, including indebtedness to pay capitalized interest and a reserve fund permitted by the PID Act for revenue bonds issued under the PID Act and indebtedness issued to pay the City’s costs of issuance in accordance with this Agreement;

**WHEREAS**, the City has determined that it is in its best interests to enter into this Agreement with the Owner for the construction and/or acquisition of the Authorized Improvements, or Segments thereof, which will result in the efficient and effective implementation of each Service and Assessment Plan.

**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**

### **Section 1.01. Definitions**

Definitions used herein are set forth in **Exhibit “A”** attached hereto and made a part hereof.

### **Section 1.02. Overview of Agreement**

This Agreement establishes provisions for the apportionment, levying, and collection of Special Assessments on the Property (**Article II**), the construction of Authorized Improvements to be acquired by the City (**Article III**), the payment of Authorized Improvements within the District (**Article IV**), the issuance of bonds for the financing of the Authorized Improvements (**Article V**), representations, warranties and indemnification (**Article VI**), default and remedies (**Article VII**) and general provisions (**Article VIII**).

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

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

(a) The Recitals set forth in the preamble of this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

(b) On June 7, 2023, the City authorized the formation of the District by resolution. The District includes all of the Property.

(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 within the District (or Improvement Area, as applicable).

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

(e) The Property may also be subject to an Owners’ Association assessment.

(f) Following preparation of the initial Service and Assessment Plan acceptable in form and substance to the City and to the Owner with respect to the matters therein that require approval by the Owner as provided in this Agreement, the City Council shall, by resolution, approve the preliminary Service and Assessment Plan and call a public hearing on the levy of Special Assessments. After conducting the public hearing, the City Council may consider approval of an Assessment Ordinance relating to Service and Assessment Plan. If an Assessment Ordinance is adopted, the City shall use reasonable efforts to expeditiously initiate and approve all necessary documents and orders required to effectuate the Service and Assessment Plan and Assessment

Ordinance. The City Council, by order, will update, amend and/or restate the Service and Assessment Plan each time Special Assessments are levied.

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

(a) The City shall use its best efforts to initiate and approve all necessary documents and ordinances required to effectuate this Agreement and to levy Special Assessments. The Owner acknowledges and agrees that a Service and 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 a series of PID Bonds being issued. A Service and Assessment Plan will be modified as required to comply with the requirements of the PID Act and the Texas Attorney General's Office. The annual indebtedness defined by the Service and Assessment Plan shall be consistent with the terms for the issuance of PID Bonds as set forth in this Agreement. The Developer will be provided with the initial draft Service and Assessment Plan and any updates a minimum of four (4) weeks prior to consideration by council and be given an opportunity to review and revise said plan or update.

(b) The City shall use its best efforts to levy Special Assessments on the Assessed Parcels in accordance herewith and with each Service and Assessment Plan. It is contemplated that the City will issue multiple series of PID Bonds, to pay or reimburse the Owner for a portion of the Actual Costs of the Authorized Improvements. The Parties anticipate that the Actual Cost to construct the Authorized Improvements will be greater than the net proceeds of the PID Bonds or the Special Assessment Revenues available for reimbursement of the costs of the Authorized Improvements and the Owner shall fund the difference.

(c) Prior to or in connection with the issuance of PID Bonds, the Owner may submit to the City one or more Special Assessment Levy Requests to finance the costs of Authorized Improvements in accordance with Section 4.02 hereof. Upon the receipt of a Special Assessment Levy Request, the City Council will consider the adoption of an Assessment Ordinance, which levies Special Assessments on the Property or an Improvement Area in accordance herewith and with the Service and Assessment Plan. The City's apportionment of the costs of Authorized Improvements and levy of Special Assessments will be made in accordance with the PID Act.

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

(a) So long as the City is obligated to reimburse the Owner for the costs of the Authorized Improvements hereunder or any PID Bonds are outstanding, 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 an Assessment Ordinance. The Annual Installment of such Special Assessments will be updated at least annually in a Service and Assessment Plan pursuant to the terms of the PID Act in the manner and to the maximum extent permitted by applicable law. The City shall cause the PID Administrator to provide copies of any annual Service and Assessment Plan updates or amendments thereto to be provided to the Owner not less than thirty (30) days prior to the date of the City Council meeting at which such update is anticipated to be approved. For each Improvement Area, the City will deposit or cause to be deposited the respective Special Assessment Revenues into a segregated account, or if PID Bonds

have been issued, then transferred to the Trustee and deposited in the funds and accounts in the priority set forth in the respective Indenture.

(b) Further notwithstanding anything to the contrary contained herein, the City covenants to use diligent, good faith efforts to contract with the Travis County Tax Assessor-Collector for the collection of the Special Assessments such that the Special Assessments will be included on the ad valorem tax bill(s) for the Assessed Parcels and will be collected as part of and in the same manner as ad valorem taxes.

(c) Owner will be reimbursed for Actual Costs associated with Authorized Improvements from Special Assessments collected by the City and held by the City pursuant to an applicable Acquisition and Reimbursement Agreement or, if PID Bonds are issued, from the proceeds of PID Bonds, until Owner is fully reimbursed by Special Assessments and/or the proceeds of PID Bonds. The balance of any reimbursement obligation due to Owner under an Acquisition and Reimbursement Agreement will be subordinate to payment of the applicable PID Bonds.

**Section 2.04. Approval and Recordation of Special Assessments through Landowner Agreement and recording of the Service and Assessment Plan**

(a) Concurrently, with the levy of the Special Assessments for the initial Improvement Area, the Owner, any other owners of land within the District, and the City, shall execute a “**Landowner Agreement**” (herein so called) in which the Owner and other owners, if applicable, (collectively, the “**Landowners**”) shall ratify, confirm, accept, agree to and approve: (a) the apportionment of assessments in the Service and Assessment Plan and the levy of the Special Assessments for the initial Improvement Area by the City, and agree to approve and accept the apportionment of assessments in each Service and Assessment Plan and the levy of each Special Assessment on all future Improvement Areas through an amendment to the Landowner Agreement; (b) the Home Buyer Disclosure Program; and (c) the creation of the District, the boundaries of the District, and the boundaries of the applicable Assessed Parcels. The Landowner Agreement further shall: (A) evidence the Landowners’ intent that all Special Assessments be covenants running with the land that (i) shall 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 property 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 state, municipality, county or school district ad valorem taxes.

(b) After the Landowner Agreement is fully executed, the Owner shall file the Landowner Agreement in the Official Public Records of the County.

(c) Further, in accordance with the PID Act, the City shall file a copy of the Service and Assessment Plan and any updates thereto with the County Clerk, within seven (7) days of approval.

**Section 2.05. Reimbursement of Actual Costs**

(a) Notwithstanding anything to the contrary contained herein, the Parties hereby acknowledge and agree that the Actual Costs expended by the Owner to construct the Authorized Improvements may not be fully reimbursed from the Special Assessment Revenues or the proceeds of PID Bonds. The Actual Costs expended by the Owner, but not funded by a series of PID Bonds, are payable solely from available Special Assessment Revenue pursuant to the applicable Acquisition and Reimbursement Agreement; provided, however that sufficient Special Assessment Revenues are available to make the payments.

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

**ARTICLE III. CONSTRUCTION AND ACQUISITION**

**Section 3.01. Acquisition of Authorized Improvements**

With respect to those Authorized Improvements to be dedicated and owned by the City, the Owner will dedicate such Authorized Improvements to the City upon completion of said Authorized Improvements, and the City will accept dedication of such Authorized Improvements after confirming that such Authorized Improvements have been completed in accordance with this Agreement. The City’s Development Rules shall govern the procedure for inspection, dedication, and acceptance of such Authorized Improvements being conveyed to the City.

**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, the 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 Agreement.

(b) Except as otherwise provided herein, inspection of the construction of any Authorized Improvement being conveyed to the City will be by City’s Construction Representative or its designee.

(c) The Owner shall be entitled to a separate Construction Management Fee for the construction of each Authorized Improvement (or Segment thereof) unless Owner contracts with a third party to act as the Construction Manager with respect to construction of the Authorized Improvements.

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

(e) The Owner shall designate the consulting engineers for the Authorized Improvements for the compensation specified by the Owner. Any fees paid to a consulting engineer must be reasonable and customary.

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

The City acknowledges and agrees that 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 provided that such designee has the technical capacity, experience and expertise to perform such construction management duties or obligations. Owner may make such designation under the same terms as set out in Section 8.03(a) of this Agreement.

### **Section 3.04. Maintenance of Project, Warranties**

Unless otherwise provided for the Owner shall maintain each Authorized Improvement, or Segment thereof, in good and safe condition in accordance with all Applicable Regulations until such Authorized Improvement, or Segment thereof, is accepted by the City. The City's acceptance of Authorized Improvements, or Segment thereof, shall be in accordance with all Applicable Regulations and procedures for the acceptance of subdivision improvements. Prior to such acceptance, the Owner shall be responsible for performing any required maintenance on such Authorized Improvement, or Segment thereof. 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, and shall provide the City with a two year maintenance bond from the date of final acceptance of the Authorized Improvements, or Segment thereof, that guarantee the costs of any repairs which may become necessary to any part of the construction work performed in connection with the Authorized Improvements, or Segment thereof, for each Authorized Improvement to be accepted by the City. Other than the requirement to provide such maintenance bond, the Owner shall have no further liability to the City for the upkeep, maintenance, operation, or status of the Authorized Improvements once accepted by the City.

### **Section 3.05. Sales and Use Tax Exemptions**

(a) The Parties understand that, as municipally and publicly owned and acquired properties, all costs of materials, other properties and services used in constructing the Authorized Improvements to be acquired by the City are exempt under the current Tax Code from sales and use taxes levied by the State of Texas, or by any city, county, special district, or other political subdivision of the State, as set forth in Section 151.309 of Tax Code and 34 Tex. Admin. Code, sec. 3.291.

(b) Upon request of the Owner, and to the extent provided by law, the City will provide such certifications to the Owner and/or to suppliers and contractors as may be required to assure the exemptions claimed herein.



(c) 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 3.06. Regulatory Requirements**

(a) Notwithstanding anything to the contrary contained herein, the Owners shall be responsible for the costs of designing, constructing, and obtaining the City's acceptance of the Authorized Improvements, in accordance with all Applicable Regulations, the City-approved plans and specifications, and "Recognized and Generally Accepted Good Engineering Practices", as such term is defined and interpreted by the Federal Occupational Safety and Health Administration.

(b) With respect to the construction of the Authorized Improvements, it is understood that their construction will be exempt from any public bidding or other purchasing and procurement policies pursuant to the current Texas Local Government Code, Section 252.022(a)(9), which states that an expenditure is exempt from such policies for "paving drainage, street widening, and other public improvements, or related matters, if at least one third of the cost is to be paid by or through Special Assessments levied on Property that will benefit from the improvements." 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.

### **Section 3.07. Additional Requirements for Authorized Improvements**

(a) The Construction Manager will maintain an ongoing monthly updated accounting of funds disbursed, work progress and remaining funding needed to complete each applicable Authorized Improvement. The Construction Manager will provide such monthly reports to the Owner, the City Construction Representative, the Administrator, the Financial Advisor, and the Trustee, as applicable.

(b) After bids and construction contracts have been executed for the applicable Authorized Improvements, all change orders or costs increases for such applicable Authorized Improvements must be approved by the Owner, Construction Manager and the City Construction Representative, to the extent any such change order is in excess of \$100,000.00 for any Segment of such applicable Authorized Improvement. The Construction Manager shall provide copies of all approved change orders to the Financial Advisor and Trustee within ten (10) days after approval.

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

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

(a) The City shall not be obligated to provide funds for any Authorized Improvement except from Special Assessments or, if PID Bonds are issued, the proceeds of the PID Bonds. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds available for the payment of the Actual Cost of the Authorized Improvements to be constructed for or acquired by the City will be sufficient for the construction or acquisition of all of those particular

Authorized Improvements. The Parties anticipate that the Actual Cost to construct the Authorized Improvements may be greater than the proceeds of the PID Bonds available for Authorized Improvements.

(b) Upon written acceptance of an Authorized Improvement, and subject to any applicable maintenance-bond period, the City shall be responsible for all operation and maintenance of such Authorized Improvement, including all costs thereof and relating thereto.

(c) The Parties hereby acknowledge and agree that:

(1) Owner will construct or cause the construction of the applicable Authorized Improvements.

(2) Authorized Improvements are initially intended to be constructed pursuant to one or more Acquisition and Reimbursement Agreements and paid for by the Owner prior to the levy of Special Assessments and the issuance of the PID Bonds intended to fund the Actual Costs of such Authorized Improvements. Such funding of the Authorized Improvements will be governed by the applicable Acquisition and Reimbursement Agreement and Section 4.02 of this Agreement.

(3) Within sixty (60) days of receipt of an Assessment Levy Request for a given Improvement Area, the City will consider the adoption of an Assessment Ordinance that (i) approves a Service and Assessment Plan (or amendment or update thereof) identifying the Assessments applicable to a respective Improvement Area, (ii) levies said Special Assessments, and (iii) establishes the timeframe for collection of said Special Assessments. The City will levy and collect such Special Assessments in accordance with the approved Service and Assessment Plan, as amended or updated, and the applicable Assessment Ordinance, as further provided in this Agreement.

(4) Upon satisfying the conditions precedent described in Section 5.01 of this Agreement, the City Council intends to consider the issuance of the PID Bonds to refinance any Unpaid Balance under an Acquisition and Reimbursement Agreement and, if applicable, to finance the Actual Costs of any Authorized Improvement not completed at the time of PID Bond issuance. Such funding of the Authorized Improvements will be governed by the Indenture and Section 4.03 of this Agreement.

(5) The maximum aggregate Tax Equivalent Assessment Rate of Special Assessments (including the Annual Installment) plus all ad valorem taxes levied by all political subdivisions within the District shall be \$3.26, but Owner may voluntarily elect to have the Tax Equivalent Assessment Rate of Special Assessments be less than \$3.26, and this shall not require approval by City Council.

**Section 4.02. Payments for Authorized Improvements Prior to the Issuance of PID Bonds**

(a) Upon the approval of an Assessment Ordinance and prior to the issuance of a series of PID Bonds, the City shall bill and collect the Special Assessment Revenues collected from the Assessed Parcels.

(b) Subject to Section 4.02(a) above, the costs of the Authorized Improvements will be initially funded through the applicable Acquisition and Reimbursement Agreement. Pursuant to the terms of such Acquisition and Reimbursement Agreement, the Owner shall dedicate or convey, and the City shall accept or acquire, as more particularly described in Article III of this Agreement, the Authorized Improvement, after such Authorized Improvement is completed. The general process for funding the Authorized Improvements before the issuance of PID Bonds is described in this Section 4.02(b), and more specifically described in the Acquisition and Reimbursement Agreement.

(c) Pursuant to an Acquisition and Reimbursement Agreement, the City will reimburse the Owner for Actual Costs incurred in connection with the applicable Authorized Improvements until PID Bonds are issued to reimburse the Owner for the Actual Costs of the Authorizing Improvements benefiting the applicable Improvement Area, the proceeds of which equal the Reimbursement Obligation (defined in the applicable Acquisition and Reimbursement Agreement), less any amounts required for reserves and any other costs or expenses associated with issuing the PID Bonds, and less any payments made from the Trustee pursuant to the applicable Acquisition and Reimbursement Agreement. The Owner will be reimbursed for only those Actual Costs for which Special Assessment Revenues or PID Bond Proceeds are available.

(d) Following receipt of an Assessment Levy Request for an Improvement Area, the City shall consider the adoption of an Assessment Ordinance for the respective Improvement Area. The City will collect the Special Assessments in accordance with a Service and Assessment Plan and the applicable Assessment Ordinance. Upon collection of such Special Assessments, the City will transfer or cause to be transferred the Assessment Revenues such that the Assessment Revenues will be held in a designated account separate from the City's other accounts (referred to herein as the "Operating Account"), such funds to be used to reimburse the Owner for the Actual Costs of the applicable Authorized Improvements pursuant to the terms of the applicable Acquisition and Reimbursement Agreement, or, if PID Bonds have been issued, then transferred to the Trustee and deposited in the proper funds and accounts in the priority set forth in the applicable Indenture. Special Assessment Revenues shall only be used to pay Actual Costs of the Authorized Improvements in accordance with this Agreement.

(e) Pursuant to an Acquisition and Reimbursement Agreement, the Owner may submit a Certification for Payment, in the form provided in **Exhibit "C"**, to the City for payment of the Actual Costs of an Authorized Improvement from funds then available in the appropriate subaccount of the Operating Account held by the City.

#### **Section 4.03. Payments for Authorized Improvements upon the Issuance of PID Bonds**

(a) As more particularly described in Section 5.01 hereof, upon receipt of a Bond Issuance Request, the City will consider the adoption of a resolution or ordinance consenting to the issuance of PID Bonds to reimburse the Owner for Actual Costs of those Authorized Improvements that are complete at the time of bond issue less any amounts already reimbursed to Owner pursuant to an Acquisition and Reimbursement Agreement.

(b) The proceeds from the issuance of the PID Bonds remaining after payment of amounts under Section 4.02 of this Agreement (if applicable) will be held by the Trustee in various segregated accounts under the Project Fund established pursuant to an Indenture. Those sums held in the various segregated accounts will be advanced to the Owner by the Trustee to fund the Actual Costs (as more particularly specified herein and in a Service and Assessment Plan) upon receipt of a completed Certification for Payment in the form as attached hereto in **Exhibit “C.”** At least ten (10) calendar days prior to the time of the closing of a series of PID Bonds, the Owner may submit a Closing Disbursement Request substantially in the form attached hereto in **Exhibit “D.”** executed by the Construction Manager, and if the request pertains to items subject to a seal of the Project Engineer, such request shall be additionally executed by the Project Engineer as to such items, to the City Construction Representative to be reimbursed for those Owner Expended Funds accrued to date of such Closing Disbursement Request and not previously reimbursed. The City Construction Representative shall conduct a review to verify the Owner Expended Funds specified in such Closing Disbursement Request. Prior to disbursement of proceeds, the City Construction Representative will sign the Closing Disbursement Request and deliver said Closing Disbursement Request to the Trustee. At the closing of a series of PID Bonds, the Owner shall be reimbursed an amount equal to the applicable Owner Expended Funds in accordance with the procedures set forth in this Section 4.03.

(c) Any Authorized Improvements that have not been (i) reimbursed at the closing of the PID Bonds, (ii) completed by Owner, or (iii) accepted by the City by the time the PID Bonds are issued, will be payable periodically as construction progresses. The procedures for such progress payments are contained in this Section 4.03 and the Indenture. Such payments shall be made by the Trustee no more frequently than monthly and within five (5) business days of the Trustee’s receipt of the completed Certification for Payment from the Construction Manager. If the City Construction Representative disapproves any Certification for Payment, the City shall provide a written explanation of the reasons for such disapproval so that if the Certification for Payment is revised in accordance with the City Construction Representative’s comments, the Certification for Payment can be submitted to the Trustee for payment.

(d) The general process for funding of Authorized Improvements from funds on deposit in a Project Fund is as follows:

(1) the Owner shall deliver to the City’s Construction Representative and the City Engineer the following:

(i) a Certification for Payment substantially in the form attached hereto as **Exhibit “C”** executed by the Construction Manager and the Project Engineer evidencing the Actual Costs;

(ii) evidence of the acceptance by the City of those Authorized Improvements to be funded by the respective series of PID Bonds and the conveyance to the City (for completed Authorized Improvements only);

(iii) a certification that all bills for work on, or materials provided for, the Authorized Improvements have been paid; and

(iv) evidence that there are no liens for the work on, or materials provided for, the applicable Authorized Improvements, receipts for payment and verification in form acceptable that any subcontractors have been paid

(2) After the Certification for Payment is submitted to the City Construction Representative, the City shall conduct a review to confirm those Authorized Improvements to be funded by proceeds of a series of PID Bonds were constructed in accordance with the plans therefor (for completed Authorized Improvements only), and the City Construction Representative will verify the Actual Costs of Authorized Improvements specified in such Certification for Payment. The City Construction Representative agrees to conduct such review and cost verification in an expeditious manner after the Certification for Payment is submitted to the City, and the Owner agrees to cooperate with the City Construction Representative in conducting each such review and to provide the City Construction Representative with such additional information and documentation as is reasonably necessary for the City Construction Representative to conclude each such review. Upon confirmation by the City Construction Representative that Authorized Improvements to be funded by the PID Bonds have been constructed in accordance with the plans therefor and this Agreement (for completed Authorized Improvements only), and verification and approval by the City Construction Representative of the Actual Costs of those Authorized Improvements, the City shall within thirty (30) calendar days after receipt of the applicable Certification for Payment accept those Authorized Improvements not previously accepted by the City Construction Representative, and shall sign the Certification for Payment and forward the executed Certification for Payment to the Trustee for payment. Other than the PID Administrator's approval of the applicable draw request, City approval is not required for the Owner's application of cost savings in completing any one Authorized Improvement that the City has accepted towards overages in the costs of a different Authorized Improvement.

(e) In addition to the submitted items required in 4.03(d) above, in order to obtain the final progress payment for an Authorized Improvement funded by a series of PID Bonds pursuant to this Section 4.03, the Owner shall have provided to the City an assignment of the warranties and guaranties, if applicable, and a two-year maintenance bond for such Authorized Improvement.

#### **Section 4.04. Assignment of Right to Payment of Unreimbursed Costs**

Owner's right, title and interest into the payments of unreimbursed Actual 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 Actual 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 or in part without the consent of (but with notice to) the City, all or any portion of Owner's right, title, or interest under this Agreement to receive payment of its unreimbursed Actual Costs, including either PID Bond Proceeds or Special Assessment Revenues, (a "Transfer," and the person or entity to whom the transfer is made, a "Transferee"); provided, however, that no such conveyance, transfer, assignment, mortgage, pledge or other encumbrance shall be made without the prior written approval of the City Council if such conveyance, transfer, assignment, mortgage, pledge or other encumbrance would result in the payments hereunder being pledged to the payment

of debt service on public securities issued by any other state of the United States or political subdivision thereof. 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 the Owner without any obligation to investigate or confirm the Transfer. A Transferee shall be responsible for all continuing disclosure requirements and obligations as agreed to by the Owner and the City in the Disclosure Agreement of Owner.

## **ARTICLE V. PID BONDS**

### **Section 5.01. Issuance of PID Bonds**

Subject to the satisfaction of conditions set forth in this Article V, the City may issue PID Bonds solely for the purposes of acquiring or constructing Authorized Improvements. The Owner may request issuance of PID Bonds by filing with the City a list of the Authorized Improvements to be funded with the PID Bonds and the estimated costs of such Authorized Improvements. The issuance of PID Bonds is subject to all of the following conditions.

(a) The City has evaluated and determined that there will be no negative impact on the City's creditworthiness, bond rating, access to or cost of capital, or potential for liability.

(b) The City has determined that the PID Bonds assessment level, structure, terms, conditions and timing of the issuance of the PID Bonds are reasonable for the Actual Costs to be financed and that there is sufficient security for the PID Bonds to be creditworthy.

(c) All costs incurred by the City that are associated with the administration of the District shall be paid out of special assessment revenue levied against property within the District. City administration costs shall include those associated with continuing disclosure, compliance with federal tax law, agent fees, staff time, regulatory reporting and legal and financial reporting requirements.

(d) The adoption of a Service and Assessment Plan and an Assessment Ordinance levying Special Assessments on all or any portion of the Property benefitted by such Authorized Improvements in amounts sufficient to pay all costs related to such District.

(e) The City has formed and utilized its own financing team including, but not limited to, Bond Counsel, Financial Advisor, PID Administrator, and underwriters related to the issuance of PID Bonds and bond financing proceedings.

(f) The City has chosen and utilized its own continuing disclosure consultant and arbitrage rebate consultant, if applicable or required. Any and all costs incurred by these activities will be included in City administration costs recouped from Special Assessment Revenue. The continuing disclosure will be divided into City disclosure and Owner disclosure, and neither Party will be responsible or liable for the other Party's disclosure, but the City's disclosures professional will be used for both disclosures.

(g) The aggregate principal amount of PID Bonds issued and to be issued shall not exceed \$12,000,000.

(h) Each series of PID Bonds shall be in an amount estimated to be sufficient to fund the Authorized Improvements or portions thereof for which such PID Bonds are being issued.

(i) Delivery by the Owner to the City of a certification or other evidence from an independent appraiser acceptable to the City confirming that the special benefits conferred on the properties being assessed for the Authorized Improvements increase the value of the property by an amount at least equal to the amount assessed against such property.

(j) Approval by the Texas Attorney General of the PID Bonds and registration of the PID Bonds by the Comptroller of Public Accounts of the State of Texas.

(k) The Owner is current on all taxes, assessments, fees and obligations to the City including without limitation payment of Special Assessments.

(l) The Owner is not in default under this Agreement or, with respect to the Property, any other agreement to which Owner and the City are parties.

(m) No outstanding PID Bonds are in default and no reserve funds established for outstanding PID Bonds have been drawn upon that have not been replenished.

(n) The PID Administrator has certified that the specified portions of the costs of the Authorized Improvements to be paid from the proceeds of the PID Bonds are eligible to be paid with the proceeds of such PID Bonds.

(o) The Authorized Improvements to be financed by the PID Bonds have been or will be constructed according to the City's required standards for similar developments including without limitation any Applicable Regulations.

(p) The City has determined that the amount of proposed Special Assessments and the structure, terms, conditions and timing of the issuance of the PID Bonds are reasonable for the project costs to be financed and the degree of development activity within the PID, and that there is sufficient security for the PID Bonds to be creditworthy.

(q) Unless otherwise approved by City Council at the time of issuance of a series of PID Bonds, the maturity for a series of PID Bonds shall be not exceed a 30 fiscal year amortization from the date of issuance.

(r) The final maturity for any PID Bonds shall be not later than 30 years from the Effective Date.

(s) The City has determined that the PID Bonds meet all regulatory and legal requirements applicable to the issuance of the PID Bonds.

(t) If the applicable portion of Authorized Improvements has not already been constructed and to the extent proceeds from a series of PID Bonds are insufficient to fund such Actual Costs, Owner shall, at the time of closing of the PID Bonds, provide a completion guarantee or other similar type of credit support in the amount of the difference between the Actual Costs and the PID Bond Proceeds available to fund such Actual Costs related to the applicable

Authorized Improvement, or Segment thereof (without limiting any other provision, in the event Owner does not or cannot provide such funding, 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).

(u) No information regarding the City, including without limitation financial information, shall be included in any offering document relating to PID Bonds without the consent of the City.

(v) The Owner agrees to provide periodic information and notices of material events regarding the Owner and the Owner's development within the District in accordance with Securities and Exchange Commission Rule 15c2-12 and any continuing disclosure agreements executed by the Owner in connection with the issuance of PID Bonds.

(w) The Owner is not in default under any Continuing Disclosure Agreement related to an issuance of PID Bonds to which it is a party.

(x) Bonds issued for the purpose of refunding any outstanding PID Bonds shall be issued in a principal amount less than or equal to the outstanding Special Assessments levied as security for the PID Bonds being refunded thereby.

(y) The maximum aggregate Tax Equivalent Assessment Rate of Special Assessments (including the Annual Installment) plus all ad valorem taxes levied by all political subdivisions within the District shall be \$3.26 per \$100.00 taxable assessed valuation. Notwithstanding the foregoing, (i) Owner may voluntarily elect to have the Tax Equivalent Assessment Rate of Special Assessments be less than \$3.26, and this shall not require approval by City Council; and (ii) the Tax Equivalent Assessment Rate of Special Assessments may exceed \$3.26 per \$100.00 taxable assessed valuation if approved by the City Council.

(z) Owner has completed and the City has accepted the Authorized Improvements, or Segment thereof, for any previous phase of the Property.

(aa) The value to lien shall be at least 3:1 for PID Bonds, unless otherwise agreed to by the City and in accordance with an Indenture.

(bb) The Owner and the City shall have entered into an Acquisition and Reimbursement Agreement that provides for the Owner's construction of certain Authorized Improvements, or Segments thereof, and the City's reimbursement to the Owner of certain Actual Costs.

(cc) The applicable requirements of any Indenture for bonds previously issued for the District are satisfied.

## **Section 5.02. Disclosure Information**

Prior to the issuance of PID Bonds by the City, the Owner agrees to provide all relevant information, including financial information, that is reasonably necessary in order to provide potential bond investors with a true and accurate offering document for any PID Bonds. The Owner agrees, represents, and warrants that any information provided by the Owner for inclusion



in a disclosure document for an issue of PID Bonds will not, to the Owner's actual knowledge, contain any untrue statement of a material fact or omit any statement of material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading, and the Owner further agrees that it will provide a certification to such effect as of the date of the closing of any PID Bonds.

### **Section 5.03. Qualified Tax-Exempt Status**

(a) Generally, in any calendar year in which PID Bonds are issued, the Owner agrees to pay the City its actual additional costs (“Additional Costs”) the City may incur in the issuance of its own public securities or obligations on its own taxing power of municipal revenues (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 (“IRC”) 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. On or before January 15th of the following calendar year, the final Additional Costs shall be calculated. By January 31st of such year, any funds in excess of the final Additional Costs that remain in such segregated account on December 31st of the preceding calendar year shall be refunded to the Owner and any deficiencies in the estimated Additional Costs paid to the City by the Owner shall be remitted to the City by the Owner.

(b) Issuance of PID Bonds prior to City Obligations. In the event the City issues PID Bonds prior to the issuance of City Obligations, the City, with assistance from its Financial Advisor, shall estimate the Additional Costs based on the market conditions as they exist approximately thirty (30) days prior to the date of the pricing of the PID Bonds (the “Estimated Costs”). The Estimated Costs are an estimate of the increased cost to the City to issue its City Obligations as non QTEO. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to the Owner in an amount less than or equal to the Estimated Costs. The Owner, in turn, shall remunerate to the City the amount shown on said invoice on or before the earlier of: (i) fifteen (15) business days after the date of said invoice, or (ii) five (5) business days prior to pricing the PID Bonds. The City shall not be required to price or sell any series of PID Bonds until the Owner has paid the invoice of Estimated Costs related to the PID Bonds then being issued.

(c) Upon the City’s approval of the City Obligations, the Financial Advisor shall calculate the Additional Costs to the City of issuing its City Obligations as non QTEO. The City will, within five (5) business days of the issuance of the City Obligations, provide written notice to the Owner of the amount of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to the Owner the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City’s notice to the Owner required under this paragraph. If the Additional Costs are more than the Estimated Costs, the Owner will pay to the City the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City’s notice required under this paragraph. If the Owner does not pay the City the difference between the Additional Costs

and the Estimated Costs within fifteen (15) business days of the date of the City's notice required under this paragraph, the Owner shall not be paid any reimbursement amounts under any PID reimbursement agreement related to the Property until such payment of Additional Costs is made in full.

(d) Issuance of City Obligations prior to PID Bonds.

(1) In the event the City issues City Obligations prior to the issuance of PID Bonds, the City, with assistance from the Financial Advisor, shall calculate the Estimated Costs based on the market conditions as they exist twenty (20) days prior to the date of the pricing of the City Obligations. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to the Owner: (1) in an amount less than or equal to the Estimated Costs, and (2) that includes the pricing date for such City Obligations. The Owner, in turn, shall remunerate to the City the amount shown on said invoice at least fifteen (15) days prior to the pricing date indicated on the invoice. If the Owner fails to pay the Estimated Costs as required under this paragraph, the City, at its option, may elect to designate the City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year.

(2) Upon the City's approval of the City Obligations, the Financial Advisor shall calculate the Additional Costs to the City of issuing non QTEO City Obligations. The City will, within five (5) business days of the issuance of the City Obligations, provide written notice to the Owner of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to the Owner the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice to the Owner. If the Additional Costs are more than the Estimated Costs, the Owner will pay to the City the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice. If the Owner does not pay to the City the difference between the Additional Costs and the Estimated Costs as required under this paragraph, then the Owner shall not be paid any reimbursement amounts under any Acquisition and Reimbursement Agreement related to the Property until such payment of Additional Costs is made in full.

(e) To the extent any Owner(s) or property 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 property owner (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 property owner(s) (including the Owner, as applicable) as necessary so as to put all developers and property owners (including the Owner, if applicable) so paying for the same calendar year in the proportion set forth in subsection (f), below, said reimbursement to be made by the City within fifteen (15) business days after its receipt of such subsequent payments of such Additional Costs.

(f) The City shall charge Additional Costs attributable to any other developer or property owner on whose behalf the City has issued debt in the same manner as described in this section, 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 has 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 proceeds from any debt issued on behalf of the Owner in such calendar year by the total proceeds from any debt issued by the City pursuant to the PID Act for the benefit of all developers (including the Owner) in such calendar year.

#### **Section 5.04. Tax Certificate**

If in connection with the issuance of PID Bonds, the City is required to deliver a certificate as to tax exemption (a "Tax Certificate") to satisfy requirements of the Internal Revenue Code, the Owner agrees to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Owner represents that such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the best of the knowledge of the officers of the Owner providing such facts and estimates, true, correct and complete as of such date. To the extent that it exercises control or direction over the use or investment of the PID Bond Proceeds (including, but not limited to, the use of the Authorized Improvements), the Owner further agrees that it will not knowingly make, or permit to be made, any use or investment of such funds that would cause any of the covenants or agreements of the City contained in a Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

#### **Section 5.05. Special Obligations**

**THE PID BONDS ARE SPECIAL OBLIGATIONS OF THE CITY SECURED SOLELY BY PLEDGED REVENUES (AS DEFINED IN AN INDENTURE) AND ANY OTHER FUNDS HELD UNDER AN INDENTURE, AS AND TO THE EXTENT PROVIDED IN SUCH 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 AN INDENTURE. THE OWNERS OF 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 AN INDENTURE, AS AND TO THE EXTENT PROVIDED IN SUCH INDENTURE. THE CITY SHALL HAVE NO LEGAL OR MORAL OBLIGATION TO THE OWNERS OF PID BONDS TO PAY THE BONDS OUT OF ANY FUNDS OF THE CITY OTHER THAN THE PLEDGED REVENUES. NONE OF THE CITY, NOR ANY OF ITS ELECTED OR APPOINTED OFFICIALS NOR ANY OF ITS OFFICERS, EMPLOYEES, CONSULTANTS OR REPRESENTATIVES SHALL INCUR ANY LIABILITY HEREUNDER TO THE OWNER OR ANY OTHER PARTY IN THEIR INDIVIDUAL CAPACITIES BY REASON OF THIS AGREEMENT OR THEIR ACTS OR OMISSIONS UNDER THIS AGREEMENT.**

#### **Section 5.06. Project Fund**

The City hereby covenants and agrees that if PID Bonds are issued, 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 Actual Costs of Authorized Improvements

and Bond Issuance Costs shall be deposited upon issuance into separate accounts within the Project Fund, which will be held by the Trustee under the Indenture.

**Section 5.07. Denomination, Maturity, Interest, and Security for Bonds**

(a) Each series of PID Bonds shall be finally authorized by the City Council and shall be issued in the denominations, shall mature and be prepaid, shall bear interest, and shall be secured by and payable solely from the PID Bond Security, all to be as described and provided in the PID Bond Ordinance or Indenture, as applicable.

(b) The final and adopted versions of the PID Bond Ordinance and the Indenture (and all documents incorporated or approved therein) shall contain provisions relating to the withdrawal, application, and uses of the proceeds of the PID Bonds when and as issued and delivered and otherwise contain such terms and provisions as are mutually approved by the City and the Owner.

**Section 5.08. Sale of PID Bonds**

The PID Bonds, if issued by the City, shall be marketed and sold through negotiated sale to an underwriter selected 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 or in such other marketing and/or sales method mutually agreed upon by the City and the Owner. The Owner agrees to fully cooperate with City with respect to the preparation of the offering document.

**ARTICLE VI. REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION**

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

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

(a) The City is a home-rule municipal corporation 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 an Assessment Ordinance, and (iii) to carry out and consummate the transactions contemplated by this Agreement.

(b) The City will not unreasonably condition, delay, or withhold consideration, documentation, and approval of an Assessment Levy Request or Bond Issuance Request.

(c) The City will not unreasonably condition, delay, or withhold final acceptance of any of the Authorized Improvements.

(d) The City will maintain proper books of record and account for all costs incurred by the City that are associated with the administration of the District, including those costs associated with continuing disclosure, compliance with federal tax law, agent fees, staff time, regulatory reporting and legal and financial reporting requirements. The City covenants that such accounting

books will be maintained in accordance with generally accepted accounting practices and will be available for inspection by the Owner or its agent at any reasonable time during regular business hours upon at least 72 hours' notice.

(e) The City will deliver a Tax Certificate as a condition of the issuance of each series of PID Bonds.

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

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

(a) The Owner, KB Home Lone Star Inc., represents and warrants that it is a Texas Corporation duly organized and validly existing under 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 a 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 an Authorized Improvement (or a Segment thereof) it will use its reasonable and diligent efforts to do all things which may be lawfully required of it in order to cause such Authorized Improvements (or Segment thereof) to be completed in accordance with this Agreement.

(e) The Owner covenants that it will not commit or knowingly permit 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 or financing of any Authorized Improvements that are not part of the Project, and (ii) it will diligently follow all procedures set forth in this Agreement, including each Certification for Payment.

(g) For a period of four (4) years after (i) the final Acceptance Date of each applicable Authorized Improvement, or (ii) claims filed upon completion, whichever is later, 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. The Owner shall provide copies (including electronic copies in a form acceptable to the City if electronic copies are requested) of such records to the

City upon written request to the Owner, and those copies shall be provided no later than ten (10) business days after receipt of a written request from the City at a cost that is no more than the rates applicable to copies provided pursuant to the Texas Public Information Act.

(h) The Owner agrees to provide the information required pursuant to an Owner Continuing Disclosure Agreement executed by the Owner in connection with the PID Bonds.

(i) The Owner covenants to provide, or cause to be provided, such facts and estimates as the City reasonably considers necessary to enable it to execute and deliver its Tax Certificate. The Owner further covenants that (i) such facts and estimates will be based on its reasonable expectations on the date of issuance of the PID Bonds and will be, to the best of the knowledge of the officers of the Owner providing such facts and estimates, true, correct, and complete as of that date, and (ii) the Owner will make reasonable inquiries to ensure such truth, correctness, and completeness. The Owner covenants that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use or investment of the Bond Proceeds that would cause any of the covenants or agreements of the City contained in the Tax Certificate to be violated or that would otherwise have an adverse effect on the tax-exempt status of the interest payable on the PID Bonds for federal income tax purposes.

(j) The Owner agrees not to take any action or actions to reduce the total amount of such Special Assessments to be levied as of the Effective Date.

### **Section 6.03. Buyer Disclosures**

The Owner shall comply with Chapter 5 of the Property Code, as amended, and shall contractually obligate (and promptly provide written evidence of such contractual provisions to the City) any party who purchases any Parcel owned by the Owner, or any portion thereof, to comply with the notice requirements set forth in Chapter 5 of the Property Code regarding any subsequent sale or conveyance of the Parcel. The Owner's compliance obligation shall terminate as to each Lot (as defined in the Service and Assessment Plan) if and when there is a sale of a Lot to a purchaser.

### **Section 6.04. Indemnification and Hold Harmless by Owner**

(a) THE OWNER WILL (WITHOUT USING ANY ASSESSMENT REVENUES OR BOND PROCEEDS) DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES, AND AGENTS (INDIVIDUALLY, AN "INDEMNIFIED PARTY," AND COLLECTIVELY, THE "INDEMNIFIED PARTIES") AGAINST AND FROM, AND WILL PAY TO THE INDEMNIFIED PARTIES, ALL WITHOUT WAIVING ANY SOVEREIGN OR GOVERNMENTAL IMMUNITY AVAILABLE TO ANY INDEMNIFIED PARTY UNDER TEXAS OR FEDERAL LAW, AND WITHOUT WAIVING ANY DEFENSES OR REMEDIES UNDER TEXAS OR FEDERAL LAW, THE AMOUNT OF, ALL ACTIONS, DAMAGES, CLAIMS, LOSSES, FEES, FINES, PENALTIES, OR EXPENSE OF ANY TYPE, WHETHER OR NOT INVOLVING A THIRD-PARTY CLAIM (COLLECTIVELY, "DAMAGES"), ARISING DIRECTLY OR INDIRECTLY, FROM:

(1) THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNER;

(2) THE NEGLIGENT DESIGN, ENGINEERING, OR CONSTRUCTION BY THE OWNER OF ANY AUTHORIZED IMPROVEMENT;

(3) THE OWNER'S NONPAYMENT UNDER CONTRACTS WITH THE GENERAL CONTRACTOR OR SUBCONTRACTORS FOR ANY AUTHORIZED IMPROVEMENT UNDER THIS AGREEMENT;

(4) ANY CLAIMS AGAINST ONE OR MORE OF THE INDEMNIFIED PARTIES RELATING TO ANY AUTHORIZED IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT; AND

(5) ANY THIRD-PARTY CLAIMS RELATING TO ANY AUTHORIZED IMPROVEMENT ACQUIRED UNDER THIS AGREEMENT.

(b) THE OWNER WILL DEFEND THE INDEMNIFIED PARTIES AGAINST ALL CLAIMS DESCRIBED IN THIS SECTION, AND THE INDEMNIFIED PARTIES WILL REASONABLY COOPERATE AND ASSIST IN PROVIDING SUCH DEFENSE.

(c) THE INDEMNIFIED PARTIES WILL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER.

(d) THE INDEMNIFIED PARTIES RESERVE THE RIGHT, BUT ARE NOT REQUIRED, TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT THEIR OWN EXPENSE.

(e) THE OWNER SHALL RETAIN INDEMNIFIED PARTY-APPROVED DEFENSE COUNSEL WITHIN 10 BUSINESS DAYS OF WRITTEN NOTICE THAT THE CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION, AND IF THE OWNER DOES NOT DO SO, THE INDEMNIFIED PARTY MAY RETAIN ITS OWN DEFENSE COUNSEL AND THE OWNER WILL BE LIABLE FOR ALL SUCH COSTS.

(f) THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT INDEFINITELY, SUBJECT TO APPROPRIATE STATUTES OF LIMITATIONS, AS THEY MAY BE TOLLED OR EXTENDED BY AGREEMENT OR OPERATION OF LAW.

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

### **Section 7.01. Default**

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.

## **Section 7.02. Breach**

(a) 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 (or five (5) days in the case of a monetary default), subject, however, in the case of non-monetary default, to the terms and provisions of Section 7.03 below.

(b) 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).

(c) 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.

(d) Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

(e) 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.

## **Section 7.03. Force Majeure**

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, any pandemic or other event declared a disaster (including a disaster declared by the County Judge), 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. Notwithstanding any provision to the contrary, Force Majeure will not excuse any



obligation to make payment under this Agreement unless the event of Force Majeure affects the ability of financial institutions generally to transfer funds in the normal course of business.

**Section 7.04. No Waiver**

No provision of this Agreement shall affect or waive any sovereign or governmental immunity available to the City and/or its elected officials, officers, employees, and agents under federal or State law nor waive any defenses or remedies at law available to the City or its elected officials, employees, and agents under federal or State law.

**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 any 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 Manor  
                          Attn: City Manager  
                          105 Eggleston Street  
                          Manor, Texas 78653

With copy to:       The Knight Law Firm  
                          Attn: Veronica Rivera  
                          223 West Anderson Lane, Suite A-105  
                          Austin, Texas 78752

If to Owner:         KB Home Lone Star, Inc.  
                          Attn: John Zinsmeyer  
                          10800 Pecan Park Blvd. Suite 200  
                          Austin, Texas 78750

With copy to:       Winstead PC  
                          Attn: Ross Martin  
                          600 W. 5<sup>th</sup> Street, Suite 900  
                          Austin, Texas 78701

## **Section 8.02. Fee Arrangement /Administration of District**

(a) The Owner agrees that it will pay all reasonable City costs and expenses (including the City's third-party advisors and consultants) related to the creation, including this Agreement, and administration of the District, as well as costs and expenses relating to the development and review of the Service and Assessment Plan, including any applicable Acquisition and Reimbursement Agreement, (including legal fees and financial advisory fees) ("City PID Costs"). To the extent that City PID Costs have not previously been paid by the Owner, prior to closing of any PID Bonds, the City shall (i) submit to the Owner and the Trustee invoices and other supporting documentation evidencing the City PID Costs and (ii) direct the Trustee to pay these fees, as applicable, to the City or on behalf of the City from proceeds of the PID Bonds.

(b) In addition to any City PID Costs pursuant to the preceding sentences, all fees of legal counsel related to the issuance of the PID Bonds, including fees for the review of the District creation and District administration documentation, the preparation of customary bond documents and the obtaining of Attorney General approval for the PID Bonds, will be paid at closing from proceeds of the PID Bonds.

(c) The Owner shall be solely responsible for the reasonable costs associated with the issuance of any PID Bonds. The terms of subparagraph (a) above shall apply to the Owner in the event that any PID Bonds are issued.

(d) The City may enter into a separate agreement with an Administrator to administer the District. The Administrative Expenses shall be collected as part of and in the same manner as Annual Installments in the amounts set forth in the Service and Assessment Plan.

## **Section 8.03. Assignment**

(a) Subject to the preceding Section 4.04 of this Agreement and subparagraph (b) below, Owner may, in its sole and absolute discretion, assign this Agreement with respect to all or part of the Project from time to time to any party so long as the assignee has demonstrated to the City's satisfaction that the financial, technical, and managerial capacity, the experience, and expertise to perform any duties or obligations so assigned and so long as the assigned rights and obligations are assumed without modifications to this Agreement. Owner shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, Owner shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Project so assigned.

(b) Any sale of a portion of the Property or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign and that the Designated Successor or Assign agrees to and accepts all of the Owner's rights and obligations to the City under this Agreement with respect to those rights and obligations that are sold, transferred, or assigned. The Owner shall provide the City an executed copy of the assignment to any Designated Successor or Assign no later than five (5) days after the assignment is fully executed by the Owner and the Designated Successor or Assign.

(c) Upon a sale of a portion of the Property or assignment of any right hereunder, the City shall not be required to release fiscal security to the Owner until the Designated Successor or Assign provides the City evidence that the Designated Successor or Assign has posted replacement fiscal security in the form and amount required by this Agreement and the City to secure the completion of Authorized Improvements.

(d) Any transfer of the Owner's rights to receive Bond Proceeds or Special Assessment Revenues (not involving an assignment of this Agreement) are addressed in the applicable Acquisition and Reimbursement Agreement.

#### **Section 8.04. Term of Agreement**

This Agreement shall terminate on the date on which the City and Owner discharge all of their obligations hereunder. In the case of any termination of this Agreement and/or dissolution of the District, the obligation of any Party to pay any Project Costs expended prior to the termination of this Agreement and/or dissolution of the District and remaining unpaid will survive such termination and/or dissolution; provided however, that any payment obligation of the City shall be payable solely from Special Assessment Revenues or, if PID Bonds are issued, the proceeds of such bonds.

#### **Section 8.05. 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 includes, with respect to Owner, its Designated Successors and Assigns, and 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 8.06. 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 8.07. Amendments**

This Agreement may be amended, modified, revised or changed by written instrument executed by the Parties. The Owner acknowledges that no officer, agent, employee, or representative of the City has any authority to change the terms of this agreement unless expressly granted that authority by the City Council.

#### **Section 8.08. 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 8.09. 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. Signatures transmitted electronically by e-mail in a “PDF” format shall have the same force and effect as original signatures in this Agreement.

### **Section 8.10. Entire Agreement**

This Agreement contains the entire agreement of the Parties.

### **Section 8.11. Severability; Waiver**

(a) 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.

(b) 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 8.12. 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 8.13. Supplemental Agreements**

Other agreements and details concerning the obligations of the Parties under and with respect to this Agreement are included in the Service and Assessment Plan, the Assessment Ordinance, PID Bond Ordinance and Indenture. The Owner will provide any continuing disclosures required under an Indenture and will execute a separate agreement outlining the Owner's continuing disclosure obligations, if required.

### **Section 8.14. Audit**

The City Construction Representative, City Manager, City Director of Finance, or any other City official or employee duly designated by the City Manager, shall have the right, during normal business hours and upon the giving of three business days' prior written notice to an Owner, to review all books and records of the Owner pertaining to costs and expenses incurred by the Owner with respect to any of the Authorized Improvements and any bids taken or received for the construction thereof or materials therefor.

### **Section 8.15. Venue**

This Agreement shall be construed under and in accordance with the laws of the State of Texas. All obligations of the parties created hereunder are performable in Travis County, Texas and venue for any action arising hereunder shall be in Travis County, Texas.

## **Section 8.16. Contract Verifications**

(a) The Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is pursuant to Section 2271.002, Texas Government Code. As used in the foregoing verification, “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.

(b) The Owner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company 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/sudan-list.xlsx>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.xlsx>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.xlsx>.

The foregoing representation is made pursuant to Section 2252.152, Texas Government Code and excludes the Owner and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, 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.

(c) Pursuant to Section 2276.002, Texas Government Code, as amended, the Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made pursuant to such Section. 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.

(d) Pursuant to Section 2274.002, Texas Government Code, as amended, the Owner hereby verifies that the Owner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Owner, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made pursuant to such Section. As used in the foregoing verification,

(1) “discriminate against a firearm entity or firearm trade association” (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade 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,

(2) “firearm entity” means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and

(3) “firearm trade association” means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

(e) As used in Section 8.16(a) through (d), the Owner understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Owner within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

(f) Submitted herewith is a completed Form 1295 in connection with the Owner’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 the Owner. The Owner 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 the Owner; and, neither the City nor its consultants have verified such information.

**Section 8.17. Notification**

If any Party receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against a Party in relation to this Agreement, the Party receiving such notice must give written notice to the other Parties of the claim or other action within three business days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action, or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice must be given in the manner provided in this Agreement. Except as otherwise directed, the notifying Party must furnish to the other Parties copies of all pertinent papers received by that Party with respect to these claims or actions.

**Section 8.18. Texas Public Information Act**

The Parties agree that this Agreement, all performance under this Agreement, and all information obtained by City in connection with this Agreement is subject to applicable provisions of the Texas Public Information Act, Texas Government Code Chapter 552, and all legal authorities relating to the Texas Public Information Act, including decisions and letter rulings issued by the Texas Attorney General’s Office; and the Owner agrees to provide City, citizens, public agencies, and other interested parties with reasonable access to all records pertaining to this Agreement subject to and in accordance with the Texas Public Information Act. Notwithstanding any provision to the contrary, nothing in this Agreement requires a Party to waive any applicable exceptions to disclosure under the Texas Public Information Act.

**Section 8.19. Correction of Technical Errors**

If, by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the Parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

**Section 8.20. No Third-Party Beneficiary**

This Agreement is solely for the benefit of the Parties, and neither the City nor the Owner intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the City and the Owner.

**Section 8.21. Exhibits**

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



- Exhibit "A" - Definitions
- Exhibit "B" - Property Description for Project
- Exhibit "C" - Certification for Payment
- Exhibit "D" - Closing Disbursement Request
- Exhibit "E" - Home Buyer Disclosure Program
- Exhibit "F" - Form of Landowner Agreement

[Signature Pages to Follow]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**CITY:**

**CITY OF MANOR, TEXAS,**  
a home rule municipality

By: \_\_\_\_\_  
Dr. Christopher Harvey, Mayor

ATTEST:

\_\_\_\_\_  
Lluvia T. Almaraz, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Veronica Rivera, City Attorney

**OWNER:**

**KB HOME LONE STAR INC.,**

a Texas corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit “A” to Financing Agreement

### DEFINITIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning ascribed thereto below:

“**Acceptance Date**” means, with respect to an Authorized Improvement or Segment thereof, the date that the City accepts dedication of such Authorized Improvement or Segment thereof.

“**Acquisition and Reimbursement Agreement**” means (whether one or more) an agreement that provides for construction and dedication of an Authorized Improvement (or Segment) to the City prior to the Owner being paid out of the applicable Bond Proceeds, whereby all or a portion of the Actual Costs will be paid to Owner initially from Special Assessment Revenues (and ultimately from PID Bonds) to reimburse the Owner for actual costs paid by the Owner that are eligible to be paid with Bond Proceeds.

“**Actual Cost(s)**” means, with respect to an Authorized Improvement, the Owner’s demonstrated, reasonable, allocable, and allowable costs of constructing such Authorized Improvement, as specified in a payment request in a form that has been reviewed and approved by the City and in an amount not to exceed the amount for each Authorized Improvement as set forth in Service and Assessment Plan. Actual Cost may include (a) the costs incurred by or on behalf of the Owner (either directly or through affiliates) for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of such Authorized Improvement, (b) the costs incurred by or on behalf of the Owner in preparing the plans for such Authorized Improvement, (c) the fees paid for obtaining permits, licenses or other governmental approvals for such Authorized Improvement, (d) a construction management fee of 4.0% of the costs incurred by or on behalf of the Owner for the construction of such Authorized Improvement if the Owner is serving as the construction manager, (e) the costs incurred by or on behalf of the Owner for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, and similar professional services related to the Authorized Improvements, (f) all labor, bonds and materials, including equipment and fixtures, by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Authorized Improvements, and (g) all related permitting, zoning and public approval expenses, architectural, engineering, and consulting fees.

“**Administrative Expenses**” means the actual or budgeted costs and expenses for: (1) the Administrator and City staff; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records with respect to Special Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and an update to the Service and Assessment Plan; (5) issuing, paying, and redeeming PID Bonds; (6) investing or depositing Special Assessments and Annual Installments; (7) complying with the Service and Assessment Plan and the PID Act with respect to the administration of a reimbursement agreement and the issuance and sale of PID Bonds, if issued, including continuing disclosure requirements; and (8) the paying agent/registrar and Trustee in connection with PID Bonds, if issued, including their respective legal counsel.

Administrative Expenses collected but not expended in any year shall be carried forward and applied to reduce Administrative Expenses for subsequent years.

“**Agreement**” has the meaning given to such term in the recitals to this Agreement.

“**Annual Installment**” shall mean the annual installment payment on a Special Assessment as calculated pursuant to each Service and Assessment Plan and approved by the City Council.

“**Assessed Parcel**” means for any year, any Parcel within the District against which a Special Assessment is levied.

“**Assessment Levy Request**” means a written request made by Owner to the City to levy Special Assessments for an applicable Improvement Area.

“**Assessment Ordinance**” means an ordinance adopted by the City Council approving a Service and Assessment Plan (or such amendments or supplements to the Service and Assessment Plan) and levying Special Assessments, as described in Article II of this Agreement.

“**Assessment Roll**” means any assessment roll for Assessed Parcels within the District.

“**Attorney General**” means the Attorney General of the State of Texas.

“**Authorized Improvements**” means the Authorized Improvements listed in the PID Act and includes the public improvements which benefit the Property and are further defined in the SAP.

“**Bond Counsel**” means Bickerstaff Heath Delgado Acosta LLP or their successor.

“**Bond Issuance Costs**” mean the costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, direct City costs, capitalized interest, reserve fund requirements, underwriter’s discount, fees charged by the Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.

“**Bond Issuance Request**” means written request made by Owner to the City in good faith as evidenced by Owner’s expenditure of necessary amounts for market studies, financial analysis, legal counsel, and other professional services and due diligence necessary to support the request.

“**Bond Proceeds**” has the meaning given to such term in Section 6.01(e) of this Agreement.

“**Certification for Payment**” means the certificate (whether one or more) to be provided by the Owner to substantiate the Actual Cost of one or more Authorized Improvements or Segments in substantially the same form as **Exhibit “C”** attached hereto.

“**City**” has the meaning given in the recitals to this Agreement.

“**City Construction Representative**” means the employee or designee of the City carrying out the duties as described in this Agreement.

“**City Council**” means the duly elected governing body and council of the City.

“**City Engineer**” means the civil engineer or firm of civil engineers selected by the City to perform the duties set forth herein.

“**Closing Disbursement Request**” means the request (whether one or more) in substantially the same form as Exhibit “D” attached hereto.

“**Construction Management Fee**” means 4% of the costs incurred by or on behalf of Owner for the construction of each Authorized Improvement (or Segment thereof).

“**Construction Manager**” means initially the Owner, and thereafter subject to change in accordance with Section 3.02 of this Agreement.

“**Cost of Issuance Account**” means an account within the Project Fund established pursuant to an Indenture and into which the Trustee will deposit Bond Proceeds to be used for the payment of Bond Issuance Costs.

“**County**” means Travis County, Texas.

“**Designated Successors and Assigns**” means (i) an entity to which Owner assigns (in writing) its rights and obligations contained in this Agreement pursuant to Section 8.03 related to all or a portion of the Property, (ii) any entity which is the successor by merger or otherwise to all or substantially all of Owner’s assets and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital, or (iii) any entity which may have acquired all of the outstanding stock or ownership of assets of Owner.

“**District**” has the meaning given to such term in the recitals to this Agreement.

“**Effective Date**” has the meaning given to such term in the recitals to this Agreement.

“**Financial Advisor**” means SAMCO Capital Markets, Inc., or its successor.

“**Force Majeure**” has the meaning as set forth in Section 7.03.

“**Foreclosure Proceeds**” means the proceeds, including interest and penalty interest, received by the City from the enforcement of the Special Assessments against any Assessed Property or Assessed Properties, whether by foreclosure of lien or otherwise, but excluding and net of all Delinquent Collection Costs (as defined in an Indenture).

“**Home Buyer Disclosure Program**” means the disclosure program, administered by the PID Administrator as set forth in a document in the form of Exhibit “E” or another form agreed to by the City and the Owner(s) that establishes a mechanism to disclose to each End User the terms and conditions under which their lot is burdened by the District.

“**Improvement Area**” has the meaning given in the Recitals to this Agreement.

**“Indenture”** or **“Trust Indenture”** means an applicable Indenture of Trust between the City and a trustee relating to the issuance of a series of PID Bonds for financing costs of Authorized Improvements, as it may be amended from time to time.

**“Non-Benefited Property”** means Parcels within the boundaries of the District that accrue no special benefit from the Authorized Improvements as determined by the City Council.

**“Owner”** means KB Home Lone Star Inc., a Texas corporation, including its Designated Successors and Assigns.

**“Owners’ Association”** means a homeowners’ association or property owners’ association.

**“Owner Continuing Disclosure Agreement”** means an agreement outlining the Owner’s continuing disclosure obligations with respect to a series of PID Bonds, if required.

**“Owner Expended Funds”** means the funds expended by the Owner to date to pay Actual Costs of the Authorized Improvements that have not been previously reimbursed by the City.

**“Parcel”** means a property within the District identified by either a tax map identification number assigned by the Travis Central Appraisal District for real property tax purpose, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the Official Public Records of Travis County, or by any other means determined by the City.

**“Party”** means the Owner or the City, as parties to this Agreement, and **“Parties”** means collectively, the Owner and the City.

**“PID Act”** means Chapter 372, Local Government Code, as amended.

**“PID Administrator”** means an employee of the City and/or third-party designee of the City who shall have the responsibilities provided for herein, in an Indenture relating to the PID Bonds or in any other agreement approved by the City Council.

**“PID Bond Ordinance”** means and refers to the order or orders of the City Council that will authorize and approve the issuance and sale of the PID Bonds and provide for their security and payment, either under the terms of the bond order or a trust indenture related to the PID Bonds.

**“PID Bond Proceeds”** means the proceeds from the issuance of a series of PID Bonds, less District formation expenses and Bond Issuance Costs, as applicable.

**“PID Bond Security”** means the funds that are to be pledged in or pursuant to the PID Bond Ordinance or the Indenture to the payment of the debt service requirements on the PID Bonds.

**“PID Bonds”** means the special assessment revenue bonds to be issued by the City, in one or more series, for the purpose of financing the Authorized Improvements that confer special benefit on the land within the District or reimbursing the Owner for Actual Costs paid prior to the issuance of the PID Bonds, which may include funds for any required reserves and amounts

necessary to pay Bond Issuance Costs, and to be secured by the revenues and funds pledged under an Indenture, consisting primarily of the Special Assessments, pursuant to the authority granted in the PID Act, and as described by this Agreement.

**“Prepayment”** means the payment of all or a portion of a Special Assessment before the due date thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of a Special Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Special Assessment.

**“Project”** has the meaning given to such term in the recitals to this Agreement.

**“Project Costs”** means the total of all Actual Costs.

**“Project Engineer”** means the civil engineer or firm of civil engineers selected by the Owner to perform the duties set forth herein, which is currently Carlson, Brigrance Doering, Inc.

**“Project Fund”** means the separate and unique fund established by the City under such name pursuant to an Indenture as described in Section 5.06 hereof.

**“Property”** has the meaning given to such term in the recitals to this Agreement.

**“Segment”** or **“Segments”** means the discrete portions of the Authorized Improvements identified as such.

**“Service and Assessment Plan”** or **“SAP”** means the Mustang Valley Public Improvement District Service and Assessment Plan (as such plan is amended and updated from time to time), to be initially adopted by the City Council in the first Assessment Ordinance for the purpose of assessing allocated costs against property located within the boundaries of the District having terms, provisions and findings approved and agreed to by the Owner, as required by Article II of this Agreement.

**“Special Assessment(s)”** means the assessments levied against a Parcel in the District, as provided for in the applicable Assessment Ordinance and in the Service and Assessment Plan, including any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

**“Special Assessment Revenues”** means money collected by or on behalf of the City from any one or more of the following: (i) a Special Assessment levied against an Assessed Parcel, or Annual Installment payment thereof, including any interest on such Special Assessment or Annual Installment thereof during any period of delinquency, (ii) a Prepayment, (iii) Delinquent Collection Costs (as defined in an Indenture), and (iv) Foreclosure Proceeds (as defined in an Indenture).

**“State”** means the State of Texas.

**“Tax Certificate”** has the meaning given to such term in Section 5.04 ,



“**Tax Code**” means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

“**Trustee**” means the trustee under the Indenture, and any successor thereto permitted under such Indenture and any other Trustee under a future Indenture.

“**Unpaid Balance**” has the meaning given to such term in the applicable Acquisition and Reimbursement Agreement.

**Exhibit “B” to Financing Agreement**  
**PROPERTY DESCRIPTION FOR PROJECT**

**Exhibit “C” to Financing Agreement**

**FORM OF CERTIFICATION FOR PAYMENT**

**CERTIFICATION FOR PAYMENT  
(Mustang Valley Public Improvement District)**

**CERTIFICATION FOR PAYMENT FORM NO.**

The undersigned \_\_\_\_\_ (the “**Construction Manager**”) requests payment from the [ \_\_\_\_\_ Account of the Project Fund][[Operating Account] [Reimbursement Account][Reimbursement Fund] ] from the City of Manor (the “**City**”) in the amount of \$ \_\_\_\_\_ for labor, design, materials, fees, and/or other general costs related to the acquisition or construction of certain Authorized Improvements providing a special benefit to property within the Mustang Valley Public Improvement District (the “**District**”). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Mustang Valley Public Improvement District Financing Agreement (the “**Financing Agreement**”).

In connection with the above referenced payment, the Construction Manager represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Construction Manager, is qualified to execute this Certification for Payment Form No. \_\_\_\_\_ on behalf of the Construction Manager and is knowledgeable as to the matters set forth herein.
2. The work described in Attachment A has been completed in the percentages stated therein.
3. The Certification for Payment for the below referenced Authorized Improvements has not been the subject of any prior Certification for Payment submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
4. The amounts listed for Actual Costs of the Authorized Improvements, as set forth in Attachment A, are a true and accurate representation of the Actual Costs associated with the acquisition, design or construction of said Authorized Improvements, and such costs (i) are in compliance with the Financing Agreement [and the Acquisition and Reimbursement Agreement], and (ii) are consistent with the Service and Assessment Plan.
5. Following is an itemized list of all deposits to and disbursements from (i) the [ \_\_\_\_\_ ] Account of the Project Fund, (ii) the Reimbursement Account and (iii) the Reimbursement Fund.

<u>Account</u>	<u>Deposits</u>	<u>Disbursements</u>
[ _____ ] Account of the Project Fund	\$	\$
		Certification for Payment Form No. _____
	\$	\$

<b>Total</b>		Certification for Payment Form No. ____
Reimbursement Account	\$	\$ Certification for Payment Form No. ____
	\$	\$ Certification for Payment Form No. ____
<b>Total</b>	<b>\$</b>	<b>\$</b>

6. The Construction Manager is in compliance with the terms and provisions of the Financing Agreement[, Acquisition and Reimbursement Agreement], and the Service and Assessment Plan.
7. The Construction Manager has timely paid all ad valorem taxes and annual installments of Assessments it owes or an entity under common control with the Construction Manager owes, located in the District and has no outstanding delinquencies for such taxes and assessments.
8. [All conditions set forth in the Indenture for the payment hereby requested have been satisfied.]
9. The work with respect to the Authorized Improvements referenced below (or its Segment) has been completed, and the City has inspected [and accepted] such Authorized Improvements (or its completed Segment). ***[Include bracketed language if final progress payment for such Authorized Improvement]***
10. The Construction Manager agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete said review.
11. No more than ninety-five percent (95%) of the budgeted or contracted hard costs for the Authorized Improvements identified may be paid until the work with respect to such Authorized Improvements (or Segment thereof) has been completed and the City has accepted such Authorized Improvements (or Segment thereof). One hundred percent (100%) of soft costs (e.g., engineering costs, inspection fees and the like) may be paid prior to acceptance of such Authorized Improvements (or Segment thereof).
12. [Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.] ***[Include bracketed language if final progress payment for such Authorized Improvement]***

13. Attached hereto as Attachment C are invoices, receipts, purchase orders, change orders, and similar instruments, which are in sufficient detail to allow the City to verify the Actual Costs for which payment is requested.
14. Also attached hereto as Attachment D are any lender consents or approvals that the Construction Manager may be required to obtain under any loan documents relating to the District.
15. [Attached hereto as Attachment E is a two-year maintenance bond for the Authorized Improvements (or its completed Segment) accepted by the City ***[Include bracketed language if final progress payment for such Authorized Improvement (or Segment thereof)]***]
16. Pursuant to the Financing Agreement, after receiving this Certification for Payment, the City has inspected [and accepted] the completed Authorized Improvements and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations. ***[Include bracketed language if final progress payment for such Authorized Improvement]***

*(Signature pages follow)*

I hereby declare that the above representations and warranties are true and correct.

**[INSERT APPLICABLE NAME], as  
CONSTRUCTION MANAGER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

[TO BE REQUIRED ONLY FOR ITEMS REQUIRING SEAL OF PROJECT ENGINEER]

JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

[\_\_\_\_\_]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVAL OF CERTIFICATION FOR PAYMENT**

The City is in receipt of the attached Certification for Payment Form No. \_\_\_\_, acknowledges the Certification for Payment, acknowledges that the Authorized Improvements (or its Segment) covered by the certificate have been inspected by the City, and otherwise finds the Certification for Payment Form No. \_\_\_\_ to be in order. After reviewing the Certification for Payment Form, the City approves the Certification for Payment Form No. \_\_\_\_ and shall direct the Trustee to make payment from [the appropriate account of the Project Fund] [the Reimbursement Fund] to the Construction Manager or to any person designated by the Construction Manager.

**CITY OF MANOR, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**ATTACHMENT A TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_**

<u>Segment</u>	Description of Work Completed under this <u>Certification for Payment</u>	Total Actual Costs of <u>Authorized Improvements</u>
		\$

**ATTACHMENT B TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_**

***[Include Attachment B if final progress payment for such Authorized Improvement]***

**[bills paid affidavit and release of liens - attached]**

**ATTACHMENT C TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_**

**INVOICE LEDGER**

Invoice Ledger								
Entity: [INSERT APPLICABLE NAME]								
Project: Mustang Valley Public Improvement District								
Certification of Payment Form No.	Date	Vendor	Invoice #	Invoice Amount	Requested Amount	Approved Amount	Budget Sub- Category	Budget Description

**[INVOICES AND/OR RECEIPTS - ATTACHED]**

**ATTACHMENT D TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

**[lender consents or approvals - attached]**

**ATTACHMENT E TO CERTIFICATION FOR PAYMENT FORM NO. \_\_\_\_\_**

*[Include Attachment E if final progress payment for such  
Authorized Improvement or Segment thereof]*

**[two-year maintenance bond - attached]**

**Exhibit “D” to Financing Agreement**

**FORM OF CLOSING DISBURSEMENT REQUEST**

**CLOSING DISBURSEMENT REQUEST  
(Mustang Valley Public Improvement District)**

The undersigned is a lawfully authorized representative for KB Home Lone Star Inc., a Texas corporation (the “Owner”) and requests payment from the [Cost of Issuance Account of the Project Fund] (as defined in Financing Agreement) from [\_\_\_\_\_] (the “Trustee”) in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) to be transferred from the [Cost of Issuance Account of the Project Fund] upon the delivery of the *[INSERT NAME OF APPLICABLE PID BONDS]* (the “Bonds”) for costs incurred relating to the issuance and sale of the Bonds for the Mustang Valley Public Improvement District (the “District”), as follows. Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the Mustang Valley Public Improvement District Financing Agreement between the Owner and the City (the “Financing Agreement”).

In connection to the above referenced payment, the Owner represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Owner and is qualified to execute this Closing Disbursement Request on behalf of the Owner, and is knowledgeable as to the matters set forth herein.
2. This request for payment for the below referenced establishment, administration, and operation of the District at the time of the delivery of the PID Bonds have not been the subject of any prior Certification for Payment submitted to the City
3. The amount listed for the below itemized costs is a true and accurate representation of the Bond Issuance Costs incurred by Owner at the time of the delivery of the Bonds, and such costs are in compliance with the Service and Assessment Plan. The itemized costs are as follows:

**[insert itemized list of costs here]**

TOTAL REQUESTED: \$ \_\_\_\_\_

4. The Owner is in compliance with the terms and provisions of the Financing Agreement, [the Acquisition and Reimbursement Agreement,] the applicable Indenture, and the Service and Assessment Plan.
5. All conditions set forth in the Indenture and [the Acquisition and Reimbursement Agreement for \_\_\_\_\_] for the payment hereby requested have been satisfied.
6. The Owner agrees to cooperate with the City in conducting its review of the requested payment and agrees to provide additional information and documentation as is reasonably necessary for the City to complete its review.

Payments requested hereunder shall be made as directed below:

*[Information regarding Payee, amount, and deposit instructions]*

I hereby declare that the above representations and warranties are true and correct.

**KB HOME LONE STAR INC.,**

a Texas corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVAL OF REQUEST BY CITY**

The City is in receipt of the attached Closing Disbursement Request, acknowledges the Closing Disbursement Request, and finds the Closing Disbursement Request to be in order. After reviewing the Closing Disbursement Request, the City approves the Closing Disbursement Request and shall include said payments in the City Certificate submitted to the Trustee directing payments to be made from [Cost of Issuance Account] [\_\_\_\_\_ Account of the Project Fund] upon delivery of the PID Bonds.

**CITY OF MANOR, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## Exhibit “E” to Financing Agreement

### MUSTANG VALLEY PUBLIC IMPROVEMENT DISTRICT HOME BUYER DISCLOSURE PROGRAM

The PID Administrator for the Mustang Valley Public Improvement District (the “PID”) shall facilitate notice to prospective homebuyers in accordance with the following minimum requirements:

1. Record notice of the PID in the appropriate land records for the Property.
2. Require homebuilders to attach the Recorded Notice of the Authorization and Establishment of the PID and the final Assessment Roll for such Assessed Parcel (or if the Assessment Roll is not available for such Assessed Parcel, then a schedule showing the maximum 30-year payment for such Assessed Parcel) in an addendum to each residential homebuyer’s contract on brightly colored paper.
3. Collect a copy of the addendum signed by each buyer from homebuilders and provide to the City.
4. Require signage indicating that the Property for sale is located in a special assessment district and require that such signage be located in conspicuous places in all model homes.
5. Prepare and provide to homebuilders an overview of the existence and effect of the PID for those homebuilders to include in each sales packet of information that it provides to prospective homebuyers.
6. Notify homebuilders who estimate monthly ownership costs of the requirement that they must include special assessments in estimated Property taxes.
7. Notify Settlement Companies through the homebuilders that they are required to include special taxes on HUD 1 forms and include in total estimated taxes for the purpose of setting up tax escrows.
8. Include notice of the PID in the homeowner association documents in conspicuous bold font.
9. The City will include announcements of the PID on the City’s website.

The Developer and the PID Administrator shall regularly monitor the implementation of this disclosure program and shall take appropriate action to require these notices to be provided when one of them discovers that any requirement is not being complied with.

**Exhibit “F” to Financing Agreement**  
**FORM OF LANDOWNER AGREEMENT**  
**LANDOWNER AGREEMENT**

This **LANDOWNER AGREEMENT** (the “Agreement”) is entered into as of \_\_\_\_\_, 2024, between the City of Manor, Texas (the “City”), a home rule municipality located in the State of Texas (the “State”), and [Corporate Entity], a [Entity Description], (“Landowner”).

**RECITALS:**

**WHEREAS**, Landowner owns the Assessed Parcel(s) described by a metes and bounds description attached as **Exhibit I** to this Agreement and which is incorporated herein for all purposes, comprising all of the non-exempt, privately-owned land described in **Exhibit I** (the “Landowner Parcel”) which is located within the Mustang Valley Public Improvement District (the “District”) in the City; and

**WHEREAS**, the City Council has adopted an assessment ordinance for the Authorized Improvements (including all exhibits and attachments thereto, the “Assessment Ordinance”) and the Service and Assessment Plan included as an exhibit to the Assessment Ordinance (the “Service and Assessment Plan”) and which is incorporated herein for all purposes, and has levied an assessment on each Assessed Parcel in the District (as identified in the Service and Assessment Plan) that will be used to reimburse Landowner for the costs of constructing the Authorized Improvements or pledged as the security for the payment of bonds or other obligations to be issued for the purpose of paying the costs of constructing the Authorized Improvements that will benefit the Assessed Property (as defined in the Service and Assessment Plan); and

**WHEREAS**, the Covenants, Conditions and Restrictions attached to this Agreement as **Exhibit II** and which are incorporated herein for all purposes, include the statutory notification required by Texas Property Code, Section 5.014, as amended, to be provided by the seller of residential property that is located in a public improvement district established under Chapter 372 of the Texas Local Government Code, as amended (the “PID Act”), to the purchaser.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, obligations and benefits hereinafter set forth, the City and Landowner hereby contract, covenant and agree as follows:

**DEFINITIONS; APPROVAL OF AGREEMENTS**

Definitions. Capitalized terms used but not defined herein (including each exhibit hereto) shall have the meanings ascribed to them in the Service and Assessment Plan (and any amendments or supplements thereto).

Affirmation of Recitals. The findings set forth in the Recitals of this Agreement are hereby

incorporated as the official findings of the City Council.

**I.**  
**AGREEMENTS OF LANDOWNER**

A. Affirmation and Acceptance of Agreements and Findings of Benefit. Landowner hereby ratifies, confirms, accepts, agrees to, and approves:

(i) the creation and boundaries of the District, and the boundaries of the Landowner's Parcel which are within the District, as shown on **Exhibit I**, and the location and development of the Authorized Improvements on the Landowner Parcel and on the property within the District;

(ii) the determinations and findings as to the benefits by the City Council in the Service and Assessment Plan and the Assessment Ordinance; and

(iii) the Assessment Ordinance and the Service and Assessment Plan.

B. Acceptance and Approval of Assessments and Lien on Property. Landowner consents to, agrees to, acknowledges and accepts the following:

(i) each Assessment levied by the City on the Landowner's Parcel within the District, as shown on the assessment roll attached as Appendix \_ to the Service and Assessment Plan (the "Assessment Roll");

(ii) the Authorized Improvements specially benefit the District, and the Landowner's Parcel, in an amount in excess of the Assessment levied on the Landowner's Parcel within the District, as such Assessment is shown on the Assessment Roll;

(iii) each Assessment is final, conclusive and binding upon Landowner and any subsequent owner of the Landowner's Parcel, regardless of whether such landowner may be required to prepay a portion of, or the entirety of, such Assessment upon the occurrence of a mandatory prepayment event as provided in the Service and Assessment Plan;

(iv) the obligation to pay the Assessment levied on the Landowner's Parcel owned by it when due and in the amount required by and stated in the Service and Assessment Plan and the Assessment Ordinance;

(v) each Assessment or reassessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is a first and prior lien against the Landowner's Parcel, superior to all other liens and monetary claims except liens or monetary claims for state, county, school district, or municipal ad valorem taxes, and is a personal liability of and charge against the owner of the Landowner's Parcel regardless of whether such owner is named;

(vi) the Assessment lien on the Landowner's Parcel is a lien and covenant that

runs with the land and is effective from the date of the Assessment Ordinance and continues until the Assessment is paid and may be enforced by the governing body of the City in the same manner that an ad valorem tax lien against real property may be enforced by the City;

(vii) delinquent installments of the Assessment shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act;

(viii) the owner of an Assessed Property may pay at any time the entire Assessment, with interest that has accrued on the Assessment, on any parcel in the Landowner's Parcel;

(ix) the Annual Installments of the Assessments (as defined in the Service and Assessment Plan and Assessment Roll) may be adjusted, decreased and extended; and, the assessed parties shall be obligated to pay their respective revised amounts of the annual installments, when due, and without the necessity of further action, assessments or reassessments by the City, the same as though they were expressly set forth herein; and

(x) Landowner has received, or hereby waives, all notices required to be provided to it under State law, including the PID Act, prior to the Effective Date (defined herein).

C. Mandatory Prepayment of Assessments. Landowner agrees and acknowledges that Landowner or subsequent landowners may have an obligation to prepay an Assessment upon the occurrence of a mandatory prepayment event, at the sole discretion of the City and as provided in the Service and Assessment Plan, as amended or updated or upon sale of property in the District to a party not subject to Assessments.

D. Notice of Assessments. Landowner further agrees as follows:

(i) the Covenants, Conditions and Restrictions attached hereto as **Exhibit II** shall be terms, conditions and provisions running with the Landowner's Parcel and shall be recorded (the contents of which shall be consistent with the Assessment Ordinance and the Service and Assessment Plan as reasonably determined by the City), in the records of the County Clerk of Travis County, as a lien and encumbrance against such Landowner's Parcel, and Landowner hereby authorizes the City to so record such documents against the Landowner's Parcel owned by Landowner;

(ii) reference to the Covenants, Conditions and Restrictions attached hereto as **Exhibit II** shall be included on all recordable subdivision plats and such plats shall be recorded in the real property records of Travis County, Texas;

(iii) in the event of any subdivision, sale, transfer or other conveyance by Landowner of the right, title or interest of Landowner in the Landowner's Parcel or any part thereof, the Landowner's Parcel, or any such part thereof, shall continue to be bound by all of the terms, conditions and provisions of such Covenants, Conditions and Restrictions and any purchaser, transferee or other subsequent owner shall take such Landowner's Parcel subject to all of the terms, conditions and provisions of such

Covenants, Conditions and Restrictions; and

(iv) Landowner shall comply with and shall contractually obligate (and promptly provide written evidence of such contractual provisions to the City) any party who purchases any Landowner's Parcel owned by Landowner, or any portion thereof, for the purpose of constructing residential properties that are eligible for "homestead" designations under State law, to comply with the Homebuyer Education Program described on **Exhibit III** to this Agreement. Such compliance obligation shall terminate as to each Lot (as defined in the Service and Assessment Plan) if, and when, (i) a final certificate of occupancy for a residential unit on such Lot is issued by the City, and (ii) there is a sale of a Lot to an individual homebuyer, it being the intent of the undersigned that the Homebuyer Education Program shall apply only to a commercial builder who is in the business of constructing and/or selling residences to individual home buyers (a "Builder") but not to subsequent sales of such residence and Lot by an individual home buyer after the initial sale by a Builder.

Notwithstanding the provisions of this Section, upon Landowner's request and the City's consent, in the City's sole and absolute discretion, the Covenants, Conditions and Restrictions may be included with other written restrictions running with the land on property within the District, provided they contain all the material provisions and provide the same material notice to prospective property owners as does the document attached as **Exhibit II**.

## **II. OWNERSHIP AND CONSTRUCTION OF AUTHORIZED IMPROVEMENTS**

A. Ownership and Transfer of Authorized Improvements. Landowner acknowledges that all of the Authorized Improvements and the land (or easements, as applicable) needed therefor shall be owned by the City, as applicable, once accepted by and conveyed to the City, following construction, and Landowner will execute such conveyances and/or dedications of public rights of way and easements as may be reasonably required to evidence such ownership, as generally described on the current plats of the property within the District, and without monetary or other compensation to the Landowner .

B. Grant of Easement and License, Construction of Authorized Improvements.

(i) Any subsequent owner of the Landowner's Parcel shall, upon the request of the City or Landowner, grant and convey to the City or Landowner and its contractors, materialmen and workmen a temporary license and/or easement, as appropriate, to construct the Authorized Improvements on the property within the District, to stage on the property within the District construction trailers, building materials and equipment to be used in connection with such construction of the Authorized Improvements and for passage and use over and across parts of the property within the District as shall be reasonably necessary during the construction of the Authorized Improvements. Any subsequent owner of the Landowner's Parcel may require that each contractor constructing the Authorized Improvements cause such owner of the Landowner's Parcel to be indemnified and/or

named as an additional insured under liability insurance reasonably acceptable to such owner of the Landowner's Parcel. The right to use and enjoy any easement and license provided above shall continue until the construction of the Authorized Improvements is complete; provided, however, any such license or easement shall automatically terminate upon the recording of the final plat for the Landowner's Parcel in the real property records of Travis County, Texas.

(ii) Landowner hereby agrees that any right or condition imposed by any agreement with respect to the Assessment has been satisfied, and that Landowner shall not have any rights or remedies against the City under any law or principles of equity concerning the Assessments, with respect to the formation of the District, approval of the Service and Assessment Plan and the City's levy and collection of the Assessments.

### **III. COVENANTS AND WARRANTIES; MISCELLANEOUS**

A. Special Covenants and Warranties of Landowner.

Landowner represents and warrants to the City as follows:

(i) Landowner is duly organized, validly existing and, as applicable, in good standing under the laws of the state of its organization and has the full right, power and authority to enter into this Agreement, and to perform all the obligations required to be performed by Landowner hereunder.

(ii) This Agreement has been duly and validly executed and delivered by, and on behalf of, Landowner and, assuming the due authorization, execution and delivery thereof by and on behalf of the City and Landowner, constitutes a valid, binding and enforceable obligation of such party enforceable in accordance with its terms. This representation and warranty are qualified to the extent the enforceability of this Agreement may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws of general application affecting the rights of creditors in general.

(iii) Neither the execution and delivery hereof, nor the taking of any actions contemplated hereby, will conflict with or result in a breach of any of the provisions of, or constitute a default, event of default or event creating a right of acceleration, termination or cancellation of any obligation under, any instrument, note, mortgage, contract, judgment, order, award, decree or other agreement or restriction to which Landowner is a party, or by which Landowner or Landowner's Parcel is otherwise bound.

(iv) Landowner is, subject to all matters of record in the Travis County, Texas Real Property Records, the sole owner of the Landowner's Parcel.

(v) The Landowner's Parcel owned by Landowner is not subject to, or encumbered by, any covenant, lien, encumbrance or agreement which would prohibit (i) the creation of the District, (ii) the levy of the Assessments and the priority of the lien related to the assessments as described in this Agreement, or (iii) the construction of the

Authorized Improvements on those portions of the property within the District which are to be owned by the City, as generally described on the current plats of the property within the District (or, if subject to any such prohibition, the approval or consent of all necessary parties thereto has been obtained).

(vi) Landowner covenants and agrees to execute any and all documents necessary, appropriate or incidental to the purposes of this Agreement, as long as such documents are consistent with this Agreement and do not create additional liability of any type to, or reduce the rights of, such Landowner by virtue of execution thereof.

B. Waiver of Claims Concerning Authorized Improvements. Landowner, with full knowledge of the provisions, and the rights thereof pursuant to such provisions, of applicable law, waives any claims against the City and its successors, assigns and agents, pertaining to the installation of the Authorized Improvements.

C. Notices.

Any notice or other communication to be given to the City or Landowner under this Agreement shall be given by delivering the same in writing to:

If to City: City of Manor  
Attn: City Manager  
105 Eggleston Street  
Manor, Texas 78653

With copy to: The Knight Law Firm  
Attn: Veronica Rivera  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

If to Owner: KB Home Lone Star, Inc.  
Attn: John Zinsmeyer  
10800 Pecan Park Blvd. Suite 200  
Austin, Texas 78750

With copy to: Winstead PC  
Attn: Ross Martin  
600 W. 5<sup>th</sup> Street, Suite 900  
Austin, Texas 78701

Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed or sent by electronic or facsimile transmission confirmed by mailing written

confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the recipient as the address set forth herein.

Each recipient may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this provision shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for, or actually received by, the addressee.

D. Parties in Interest.

This Agreement is made solely for the benefit of the City and Landowner and is not assignable, except, in the case of Landowner, in connection with the sale or disposition of all or substantially all of the parcels which constitute the Landowner's Parcel. However, the parties expressly agree and acknowledge that the City, Landowner, each current owner of any parcel which constitutes the Landowner's Parcel, and the holders of bonds issued by the City to finance the costs of the Authorized Improvements and which are secured by a pledge of the Assessments or any part thereof, are express beneficiaries of this Agreement and shall be entitled to pursue any and all remedies at law or in equity to enforce the obligations of the parties hereto. This Agreement shall be recorded in the real property records of Travis County, Texas.

E. Amendments.

This Agreement may be amended only by written instrument executed by the City and Landowner. No termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the then-current owners of the property within the District and recorded in the Real Property Records of Travis County, Texas.

F. Effective Date.

This Agreement shall become and be effective (the "Effective Date") upon the date of final execution by the latter of the City and Landowner and shall be valid and enforceable on said date and thereafter.

G. Estoppels.

Within ten (10) business days after written request from a party hereto, the other party shall provide a written certification, indicating whether this Agreement remains in effect as to the Landowner's Parcel.

H. Termination.

This Agreement shall terminate and be of no further force and effect as to the Landowner's Parcel upon payment in full of the Assessment(s) against such Landowner's Parcel.



I. No Boycott of Israel. Landowner hereby verifies that the Landowner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is pursuant to Section 2271.002, Texas Government Code. As used in the foregoing verification, “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.

J. No Business with Sanctioned Countries. Landowner represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company 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/sudan-list.xlsx>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.xlsx>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.xlsx>.

The foregoing representation is made pursuant to Section 2252.152, Texas Government Code and excludes the Landowner and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, 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.

K. Verification Regarding Energy Company Boycotts. Pursuant to Section 2276.002, Texas Government Code, as amended, the Landowner hereby verifies that the Landowner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made pursuant to such Section. 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.

L. Verification Regarding Discrimination Against Firearm Entity or Trade Association. Pursuant to Section 2274.002, Texas Government Code, as amended, the Landowner hereby verifies that the Landowner and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowner, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

The foregoing verification is made pursuant to such Section. As used in the foregoing verification,

(a) “discriminate against a firearm entity or firearm trade association” (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade 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,

(b) “firearm entity” means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code),

(c) “firearm trade association” means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

The Landowner understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Owner within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

[Signature pages to follow]

EXECUTED by the City and Landowner on the respective dates stated below.

Date: \_\_\_\_\_

**CITY OF MANOR, TEXAS**

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

STATE OF TEXAS                    §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the \_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_, the Mayor of the City of Manor, Texas on behalf of said City.

(SEAL)

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

\_\_\_\_\_  
Name printed or typed

Commission Expires: \_\_\_\_\_

[Signature Page Landowner Agreement]

**LANDOWNER:**

**[Corporate Entity],**  
a [Entity Description]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF TEXAS            §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_, of \_\_\_\_\_, a [Entity Description], on behalf of said company.

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

[Signature Page Landowner Agreement]

**LANDOWNER AGREEMENT EXHIBIT I**  
**METES AND BOUNDS DESCRIPTION OF LANDOWNER'S PARCEL**

## LANDOWNER AGREEMENT EXHIBIT II

### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (as it may be amended from time to time, this “Declaration”) is made as of \_\_\_\_\_, 2024 by [Corporate Entity], a [Entity Description], (the “Landowner”).

#### RECITALS:

- A. The Landowner holds record title to that portion of the real property located in Travis County, Texas, which is described in the attached Exhibit I (the “Landowner’s Parcel”).
- B. The City Council of the City of Manor (the “City Council”) upon a petition requesting the establishment of a public improvement district covering the property within the District to be known as the Mustang Valley Public Improvement District (the “District”) by the then owners of more than 50% of the appraised value of the taxable real property and owners of more than 50% of the area of all taxable real property within the area requested to be included in the District created such District, in accordance with the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the “PID Act”).
- C. The City Council has adopted an Assessment Ordinance to levy assessments for certain public improvements (including all exhibits and attachments thereto, the “Assessment Ordinance”) and the Service and Assessment Plan included as an exhibit to the Assessment Ordinance (as amended from time to time, the “Service and Assessment Plan”), and has levied the assessments (as amended from time to time, the “Assessments”) on property in of the District.
- D. The statutory notification required by Texas Property Code, Section 5.014, as amended, to be provided by the seller of residential property that is located in a public improvement district established under Chapter 372 of the Texas Local Government Code, as amended, to the purchaser, is incorporated into these Covenants, Conditions and Restrictions.

#### DECLARATIONS:

NOW, THEREFORE, the Landowner hereby declares that the Landowner’s Parcel is and shall be subject to, and hereby imposes on the Landowner’s Parcel, the following covenants, conditions, and restrictions:

#### 1. Acceptance and Approval of Assessments and Lien on Property:

- (a) Landowner accepts each Assessment levied on the Landowner’s Parcel owned by such Landowner.
- (b) The Assessment (including any reassessment, the expense of collection, and

reasonable attorney's fees, if incurred) is (a) a first and prior lien (the "Assessment Lien") against the property assessed, superior to all other liens or claims except for liens or claims for state, county, school district or municipality ad valorem property taxes whether now or hereafter payable, and (b) a personal liability of and charge against the owners of the property to the extent of their ownership regardless of whether the owners are named. The Assessment Lien is effective from the date of the Assessment Ordinance until the Assessments are paid and may be enforced by the City in the same manner as an ad valorem property tax levied against real property that may be enforced by the City. The owner of any assessed property may pay, at any time, the entire Assessment levied against any such property. Foreclosure of an ad valorem property tax lien on property within the District will not extinguish the Assessment or any unpaid but not yet due annual installments of the Assessment and will not accelerate the due date for any unpaid and not yet due annual installments of the Assessment.

It is the clear intention of all parties to these Declarations of Covenants, Conditions and Restrictions, that the Assessments, including any annual installments of the Assessments (as such annual installments may be adjusted, decreased or extended), are covenants that run with the Landowner's Parcel and specifically binds the Landowner, its successors and assigns.

In the event of delinquency in the payment of any annual installment of the Assessment, the City is empowered to order institution of an action in district court to foreclose the related Assessment Lien, to enforce personal liability against the owner of the real property for the Assessment, or both. In such action the real property subject to the delinquent Assessment may be sold at judicial foreclosure sale for the amount of such delinquent property taxes and Assessment, plus penalties, interest, and costs of collection.

**2. Landowner or any subsequent owner of the Landowner's Parcel waives:**

- (a) any and all defects, irregularities, illegalities, or deficiencies in the proceedings establishing the District and levying and collecting the Assessments or the annual installments of the Assessments;
- (b) any and all notices and time periods provided by the PID Act including, but not limited to, notice of the establishment of the District and notice of public hearings regarding the levy of Assessments by the City Council concerning the Assessments;
- (c) any and all defects, irregularities, illegalities, or deficiencies in, or in the adoption of, the Assessment Ordinance by the City Council;
- (d) any and all actions and defenses against the adoption or amendment of the Service and Assessment Plan, the City's finding of a 'special benefit' pursuant to the PID Act and the Service and Assessment Plan, and the levy of the Assessments; and
- (e) any right to object to the legality of any of the Assessments or the Service and

Assessment Plan or to any of the previous proceedings connected therewith which occurred prior to, or upon, the City Council's levy of the Assessments.

3. **Amendments:** This Declaration may be terminated or amended only by a document duly executed and acknowledged by the then-current owner(s) of the Landowner's Parcel and the City. No such termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the parties by whom approval is required as set forth above and recorded in the Real Property Records of Travis County, Texas.
4. **Third Party Beneficiary:** The City is a third-party beneficiary to this Declaration and may enforce the terms hereof.
5. **Notice to Subsequent Purchasers:** Upon the sale of a dwelling unit within the District, the purchaser of such property shall be provided a written notice that reads substantially similar to the following:

**TEXAS PROPERTY CODE SECTION 5.014**

**NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT TO THE CITY OF MANOR, TRAVIS COUNTY, TEXAS CONCERNING THE PROPERTY AT [Street Address:]**

As the purchaser of the real property described above, you are obligated to pay assessments to the City of Manor, Texas, for the costs of a portion of a public improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property within the Mustang Valley Public Improvement District (the "District") created under the provisions of Subchapter A, Chapter 372, Texas Local Government Code, as amended.

**ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.**

The exact amount of the assessment may be obtained from the City of Manor, Texas. The exact amount of each annual installment will be approved each year by the City Council of the City of Manor, Texas in the annual service plan update for the District. More information about the assessments, including the amounts and due dates, may be obtained from the City of Manor, Texas, 105 Eggleston Street, Manor, Texas 78653.

**YOUR FAILURE TO PAY ANY ASSESSMENT OR ANY ANNUAL INSTALLMENT MAY RESULT IN PENALTIES AND INTEREST BEING ADDED TO WHAT YOU OWE OR IN A LIEN ON AND THE FORECLOSURE OF YOUR PROPERTY.**



The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

Signature of Purchaser(s) \_\_\_\_\_ Date: \_\_\_\_\_

EXECUTED by the undersigned on the date set forth below to be effective as of the date first above written.

**LANDOWNER**

**[Corporate Entity],**  
a [Entity Description]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2024 by \_\_\_\_\_ of \_\_\_\_\_, a [Entity Description], on behalf of said company.

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

**LANDOWNER AGREEMENT EXHIBIT III**  
**HOMEBUYER EDUCATION PROGRAM**

As used in this Exhibit III, the recorded Assessment Ordinance and the Covenants, Conditions and Restrictions in Exhibit II of this Agreement are referred to as the “Recorded Notices.”

1. Any Landowner who is a Builder shall attach the Recorded Notices and the final Assessment Roll for such Assessed Parcel (or if the Assessment Roll is not available for such Assessed Parcel, then a schedule showing the maximum 30 year payment for such Assessed Parcel) as an addendum to any residential homebuyer’s contract.
2. Any Landowner who is a Builder shall provide evidence of compliance with 1 above, signed by such residential homebuyer, to the City.
3. Any Landowner who is a Builder shall prominently display signage in its model homes, if any, substantially in the form of the Recorded Notices.
4. If prepared and provided by the City, any Landowner who is a Builder shall distribute informational brochures about the existence and effect of the District in prospective homebuyer sales packets.
5. Any Landowner who is a Builder shall include Assessments in estimated property taxes, if such Builder estimates monthly ownership costs for prospective homebuyers.