

SEVEN OAKS

DEVELOPMENT AGREEMENT

BETWEEN

HMH TOMBALL TOWNHOMES, LLC

AND

THE CITY OF TOMBALL, TEXAS

Dated: _____ 2022

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SEVEN OAKS DEVELOPMENT AGREEMENT

This Seven Oaks Development Agreement (this “**Agreement**”), dated as of _____, 2022 (the “**Effective Date**”), (subject to termination as provided in Article 11) is entered into between HMH Tomball Townhomes, LLC, a Texas limited liability company (the “**Developer**”), and the City of Tomball Texas (the “**City**”), a home-rule city and municipal corporation, acting by and through its duly authorized representative.

Recitals:

WHEREAS, unless otherwise defined: (1) all references to “sections” shall mean to sections of this Agreement; (2) all references to “exhibits” shall mean exhibits to this Agreement which are incorporated as part of this Agreement for all purposes; and (3) all references to “ordinances” or “resolutions” shall mean ordinances or resolutions adopted by the City Council of the City of Tomball, Texas (the “City Council”); and

WHEREAS the Developer has acquired for development, approximately 19.34 acres of real property described in Exhibit A attached hereto (the “Property”) within the corporate limits of the City as a single-family residential/townhome development, in accordance with the applicable City Regulations (the “Project”); and

WHEREAS, in order to incentivize the development of the Property and encourage and support economic development within the City and to promote employment, the City desires to facilitate the development of the Property through the financing of certain public infrastructure (the “Public Improvements” as defined herein) and constructing additional public improvements within the Property; and

WHEREAS, in order to finance the Public Improvements, the City Council intends to create a public improvement district that is coterminous with the boundaries of the Property (the “PID”) in accordance with Chapter 372 Texas Local Government Code, as amended (the “PID Act”); and

WHEREAS, the City recognizes that financing of the Public Improvements confers a special benefit to the Property within the PID; and

WHEREAS, the City intends to (upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement), adopt the Assessment Ordinance (as defined herein) and adopt Service and Assessment Plans (“SAP”) (as defined herein) which provide for the construction, and financing of the Public Improvements pursuant to a Service and Assessment Plan, payable in whole or in part by and from Assessments levied against property within the PID (whether through a cash reimbursement or through an issuance of PID Bonds); and

WHEREAS, upon satisfaction of the conditions and in accordance with the terms set forth in this Agreement, the City intends to levy Assessments on all benefitted property located within the PID and issue PID Bonds (as defined herein) up to a maximum aggregate principal amount of \$9,000,000 for payment or reimbursement of the Public Improvements included in the SAP; and

WHEREAS the payment and reimbursement for the Public Improvements shall be solely from the installment payments of Assessments and/or proceeds of the PID Bonds and the City shall never be responsible for the payment of the Public Improvements or the PID Bonds from its general fund or its ad valorem tax collections, past or future or any other source of City revenue or any assets of the City of whatsoever nature; and

WHEREAS, the City recognizes the positive impact that the construction and installation of the Public Improvements for the PID will bring to the City and will promote state and local economic development; to stimulate business and commercial activity in the City; for the development and diversification of the economy of the State; development and expansion of commerce in the State, and elimination of employment or underemployment in the State;

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

DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Article have the meanings assigned to them in the Recitals or this Article, and all such terms include the plural as well as the singular.

“Actual Costs” is defined in the Service and Assessment Plan.

“Affiliates” of HMH Tomball Townhomes, LLC. means any other person directly controlling, or directly controlled by or under direct common control with the Developer. As used in this definition, the term “control,” “controlling” or “controlled by” shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of the Developer, or (b) direct or cause the direction of management or policies of the Developer, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of the Developer or any affiliate of such lender.

“Agreement” has the meaning stated in the first paragraph of this Agreement.

“Amenities” means the amenities to be constructed by the Developer and owned by the Developer or the HOA, as set forth in the PD, PID Petition and in Exhibit K.

“Annual Installments” means with respect to each parcel subject to Assessments, each annual payment of the Assessments, including any applicable interest, as set forth and calculated in the SAP.

“Applicable Law” means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority. Applicable Laws shall include, but not be limited to, City Regulations.

“Appraisal” means an appraisal of the property to be assessed in each PID by a licensed MAI Appraiser, such Appraisal to include as-complete improvements, including the Public Improvements to be financed in part with PID Bonds (i.e., “as-complete”) and the construction and installation of the Private Improvements, necessary to get a Final Lot Value.

“Assessment Ordinance” means one or more of the City’s ordinances approving a SAP and levying Assessments on the benefitted Property within the PID.

“Assessments” means those certain assessments levied by the City pursuant to the PID Act and on benefitted parcels within the PID for the purpose of paying the costs of the Public Improvements, which Assessments shall be structured to be amortized over 30 years, including interest, all as set forth in or modified by the Service and Assessment Plan.

“City” means the City of Tomball, Texas.

“City Regulations” mean provisions of the City’s Code of Ordinances, ordinances not codified, design standards, uniform and international building and construction codes, and other policies duly adopted by the City, which shall be applied to the Development, including zoning and the approved Planned Development.

“City Representative” means the City Manager or designee which may include a third party inspector or representative.

“Closing Disbursement Request” means the Closing Disbursement Request described in Section 4.06, the form of which is attached as Exhibit G.

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the applicable improvement, or portion thereof, as the case may be, on the Property; (ii) all necessary permits for the initiation of construction of the improvement, or portion thereof, as the case may be, on the Property pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Property for the construction of the applicable improvement, or portion thereof, as the case may be, has commenced.

“Completion of Construction” shall mean that the City has with respect to applicable Public Improvements accepted the respective Public Improvements and confirmed that Final Completion has been reached with respect to such Public Improvements.

“Completed Lots” means Fully Developed and Improved Lots for which (i) water, sanitary sewer, drainage and roads have been extended, and (ii) the City has authorized that a building permit may be obtained for construction on each lot.

“Concept Plan” means the concept plan attached hereto as Exhibit J.

“Construction Agreements” mean the contracts for the construction of the Public Improvements.

“Cost Overruns” means those Public Improvement Project Costs that exceed the budget cost set forth in the SAP(s) plus the Developer Cash Contribution.

“Cost Underruns” means Public Improvement Project Costs that are less than the budgeted cost set forth in the SAP(s).

“Delinquent Collection Costs” shall be defined in the SAP(s).

“Developer” means HMH Tomball Townhomes, LLC, a Texas limited liability company, its successors and permitted assigns.

“Development” means the Seven Oaks Development, a residential development to be developed and constructed on the Property pursuant to the City Regulations.

“Development Standards” means those standards set forth in Exhibit D.

“Effective Date” means the date set forth in the first paragraph of this Agreement which shall be the earliest date on which (i) the Developer has executed this Agreement and (ii) the Agreement is approved by City Council in open session.

“End Buyer” means any developer, homebuilder, tenant, user, or owner of a Fully Developed and Improved Lot.

“Estimated Build Out Value” means the estimated value of an assessed property with fully constructed buildings, as provided by the Developer and confirmed by the City by considering such factors as density, lot size, estimated square footage of the homes to be built, proximity to amenities, view premiums, location, market conditions, historical sales, builder contracts, discussions with homebuilders, reports from third party consultants, or any other factors that, in the judgment of the City, may impact value.

“Final Completion” means as the point in the construction of the project when the City determines that the project is 100% completed, including punch list work.

“Final Lot Value” means the developed lot values established by an Appraisal.

“Force Majeure” means any act that (i) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (ii) is beyond the reasonable control of the affected Party, (iii) is not due to the affected Party’s fault or negligence and (iv) could not be avoided, by the Party who suffers it, by the exercise of commercially reasonable efforts. “Force Majeure” shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (e) fires; (f) epidemics or pandemics where shut-down of residential construction or the manufacturing of supplies relating thereto has been ordered by a Governmental Authority; and (g) actions or omissions of a Governmental Authority (including the actions of the City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its

obligations under this Agreement or any Applicable Law or failure to comply with City Regulations; provided, however, that under no circumstances shall Force Majeure include any of the following events: (g) economic hardship; (h) changes in market condition; (i) any strike or labor dispute involving the employees of the Developer or any Affiliate of the Developer, other than industry or nationwide strikes or labor disputes; (j) during construction, weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (k) the occurrence of any manpower, material or equipment shortages except as set forth in (f) above; or (l) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Developer, or any construction contracts for the Project Improvement and Public Improvements.

“Fully Developed and Improved Lot” means any lot in the Property, regardless of proposed use, intended to be served by the Public Improvements and for which a final plat has been approved by the City and recorded in the Real Property Records of Harris County, Texas.

“Governmental Authority” means any Federal, state or local governmental entity (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Applicable Law, pursuant to the terms of this Agreement or by agreement of the Parties.

“HOA” is defined in Section 10.01.

“HOA Maintenance Agreement” is defined in Section 10.01

“HOA Maintained Improvements” is defined in Section 10.01.

“Home or Property Buyer Disclosure Program” means the disclosure program, as set forth in a document in the form of Exhibit H that establishes a mechanism to disclose to each End Buyer the terms and conditions under which their lot is burdened by the PID.

“Indenture(s)” means the applicable indenture of trust pursuant to which PID Bonds are issued.

“Impact Fees” means all utility or drainage impact fees relating to the Public Improvements in each case assessed, imposed and collected by the City on the Property in accordance with the City Regulations adopted by the City, as may be revised or amended from time to time.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, sales taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Developer, or any property or any business owned by Developer within City.

“Indenture(s)” means the applicable trust indenture pursuant to which PID Bonds are issued.

“Landscape Regulations” means those regulations and standards for landscaping as contained in the PD or PID Petition.

“Landowner Consent” means a consent executed by the applicable owner(s) of the Property consenting to the formation of the PID and the levy of Assessments, in form attached hereto as Exhibit F.

“Lot” means a parcel of land zoned for single family residential with attached townhome use and final platted for such use.

“Net Bond Proceeds” means the proceeds of the PID Bonds issued pursuant to Sections 3.02, net of costs of issuance, capitalized interest, reserve funds and other financing costs, that are deposited to the project fund for such bonds.

“Operator” means the operating entity for the Laguna.

“Parties” or “Party” means the City and the Developer as parties to this Agreement.

“Payment Certificate” means a Payment Certificate as set forth in Section 9.03, the form of which is attached as Exhibit F.

“PD” or “PD Zoning” means the Planned Development Zoning District Ordinance No. 2021-17 approved by the City on June 21, 2021, as may be amended pursuant to City Regulations.

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

“PID Bond Proceeds” means the proceeds of the PID Bonds, net of costs of issuance, capitalized interest, reserve funds and other financing costs, that are deposited to the Project Fund.

“PID Bonds” means one or more series special assessment revenue bonds issued by the City pursuant to the PID Act for the reimbursement of the Public Improvement Project Costs.

“PID” means the Seven Oaks Public Improvement District.

“PID Petition” means that certain Petition submitted to the City by the Developer requesting the creating of a public improvement district pursuant to Chapter 372, Texas Local Government Code, as amended, including all documents attached to the PID Petition at the time of submittal, as set forth in Exhibit I.

“Plans and Specifications” means the plans and specifications for Public Improvements approved by the City.

“Private Improvements” means these horizontal improvements described in the Plans and Specifications submitted to the City as part of the zoning process, other than the Public Improvements, being constructed to get to a Final Lot Value.

“Professional Services Agreement” means that certain agreement between the City and the Developer dated [August 15, 2022] pursuant to which the Developer shall pay certain City costs with respect to the Development and PID financing.

“Project Fund” means the fund by that name created under each Indenture into which PID Bond Proceeds shall be deposited.

“Property” means approximately 19.34 acres of real property located within the City described in Exhibit A.

“Public Improvement Financing Date” means the date the City levies Assessments on the Property, such date to be no later than [May 1, 2023] which date may be extended by written agreement of the Parties.

“Public Improvement Project Costs” means the estimated cost of the Public Improvements to be constructed to benefit the land within the PID as set forth in Exhibit C, as may be amended pursuant to this Agreement, such costs to be eligible “project costs,” as defined in the PID Act.

“Public Improvements” means public improvements to be developed and constructed or caused to be developed or constructed inside and outside the PID by the Developer to benefit the PID and the Property, which will include improvements described in Exhibit C.

“Public Improvement Completion Date” means a date that is no later than eighteen (18) months after Commencement of Construction for the Public Improvements to be reimbursed by the PID Bonds. Such date may be extended by two six (6) month extensions that may be granted by the City Manager upon request of the Developer.

“Reimbursement Agreement(s)” means the agreement(s) between the City and the Developer in which Developer agrees to fund the certain costs of Public Improvements and the City agrees to reimburse the Developer for a portion of such costs of the Public Improvements from the proceeds of Assessments pursuant to the SAP(s) or from future PID Bond proceeds, if any.

“Reimbursement Cap” means the amount of \$9,000,000.

“Service and Assessment Plan” or “SAP” means the service and assessment plans drafted pursuant to the PID Act for the PID and any amendments or updates thereto, adopted and approved by the City that identifies and allocates the Assessments on benefitted parcels within the PID and sets forth the method of assessment, the parcels assessed, the amount of the Assessments, the Public Improvements and the method of collection of the Assessment.

“Trustee” means the trustee under the Indenture.

“Waiver of Liens” means a complete, final and unconditional waiver of all liens with respect to the Public Improvements.

ARTICLE II

THE DEVELOPMENT

Section 2.01. Scope of Agreement. This Agreement establishes provisions for the apportionment, levying, and collection of Assessments on the Property within the PID, the

construction of the Public Improvements, reimbursement, acquisition, ownership and maintenance of the Public Improvements, and the issuance of PID Bonds for the financing of the Public Improvements benefitting the property within the PID.

Section 2.02. Project Overview – The Development.

(a) The Developer will undertake or cause the undertaking of the design, development, construction, maintenance, management, use and operation of the Development, and will undertake the design, development and construction of the Public Improvements. The Development will consist of the following elements:

- (i) Up to 141 single-family residential attached townhomes; and.
- (ii) Amenities set forth in Exhibit K and in the PID Petition as approved by City Council.

(b) Subject to the terms and conditions set forth in this Agreement, the Developer shall plan, design, construct, and complete or cause the planning, designing, construction and completion of the Public Improvements to the City's standards and specifications and subject to the City's approval as provided herein and in accordance with City Regulations, the Development Regulations, the Concept Plan and Applicable Law.

(c) Upon completion and acceptance by the City, the City shall own and maintain all of the Public Improvements.

(d) The Developer shall construct or cause to be constructed, the Amenities as set forth in Exhibit K and in the PID Petition and such Amenities shall not be owned by the City and shall not be paid or reimbursed as a Public Improvement Project Cost.

ARTICLE III

PUBLIC IMPROVEMENT DISTRICT

Section 3.01. Creation.

The Developer intends to request the creation of the PID that in total, encompasses the the Property by submitting a petition to the City that contain a list of the Public Improvements to be funded or acquired with the PID Bond Proceeds and the estimated or actual costs of such Public Improvements. Such petition shall also allow for the City's levy of Assessments for maintenance purposes and for administration of the PID. Upon receipt and acceptance of such petition, the City shall hold a public hearing to consider the creation of the PID in accordance with the PID Act. Developer has previously entered into professional services agreement that obligates Developer to fund the costs of the City's professionals relating to the preparation for and issuance of PID Bonds, which amount shall be considered a cost payable from PID Bond Proceeds.

Section 3.02. Issuance of PID Bonds.

(a) Subject to the terms and conditions set forth in this Article III, the City intends to levy Assessments on the Property and thereafter authorize the issuance of PID Bonds in one or more series (each to coincide with the Developer's phased development of the single-family portion of the Property) up to an aggregate principal amount of \$9,000,000 to pay for or reimburse the Public Improvements Project Costs. The Public Improvements to be constructed and reimbursed in connection with the PID Bonds are detailed in Exhibit C, which may be amended from time to time, and in the Service and Assessment Plan for the PID or any updates thereto. The net proceeds from the sale of each series of PID Bonds (i.e., net of costs and expenses of issuance of each series of PID Bonds and amounts for debt service reserves and capitalized interest) will be used to reimburse the Public Improvement Project Costs. Notwithstanding anything in this Agreement, the issuance of PID Bonds and the levy of Assessments is a discretionary governmental action by the City Council and subject to the City's approval and the issuance of PID Bonds is also subject to market conditions at the time of issuance. The issuance of PID Bonds and the levy of Assessments is an action to be taken by a future City Council and such future City Council shall not be bound by the terms of this Agreement with respect to the issuance of PID Bonds and the levy of Assessments.

(b) The issuance of PID Bonds is subject to the discretion of the City Council and each series of PID Bonds shall be issued with the terms deemed appropriate by the City Council at the time of issuance, if at all.

(c) The following conditions must be satisfied prior to the City's consideration of the sale of PID Bonds:

(i) The date of the levy of Assessments is on or before the Public Improvement Financing Date.

(ii) The total maximum aggregate par amount of the PID Bonds to be issued by the City shall not exceed \$9,000,000.

(iii) The maximum "tax rate" for the Lots in the PID [for the projected annual assessment shall be no greater than \$0.72] per \$100 of assessed value at the time of the levy of the Assessment on each Lot based on the Estimated Build Out Value of each Lot; such rate limit for each Lot as determined at the time of the levy of the Assessments applies on an individual assessed parcel basis by Lot Type based on Estimated Build Out Value, as will be set forth in more detail in the Service and Assessment Plan.

(iv) the total assessment value to lien ratio is at least 3:1 at the time of the levy of assessments and the total assessment value to lien ratio of each series of PID Bonds for is at least 3:1 at the time of the issuance of PID Bonds; such values shall be confirmed by appraisal from licensed MAI appraiser.

(v) The Developer or its Affiliates, or another entity that has purchased a portion of the Property for development shall own all property within the PID prior to the levy of Assessments, or have otherwise complied with Section 3.04 herein. The City shall

not levy Assessments without a recorded consent to the creation of the PID and the levy of Assessments from each property owner within the area to be assessed by the City.

(vi) No Event of Default by the Developer has occurred or no event has occurred which but for notice, the lapse of time or both, would constitute an Event of Default by the Developer pursuant to this Agreement, except that if an Event of Default has occurred and has been cured by the Developer, it shall not prevent the issuance of PID Bonds by the City;

(vii) The Public Improvements to be reimbursed from the proceeds of the PID Bonds must have reached Completion of Construction.

(viii) Fifty percent (50%) of the single-family attached townhomes to be constructed on the Property have been fully completed and certificates of occupancy issued prior to the issuance of any PID Bonds

(ix) The total assessment value to lien ratio must be at least 3:1 at the time of the levy of assessments.

(x) The City shall have reviewed and approved the HOA covenants, conditions and restrictions prior to filing, and the covenants, conditions and restrictions for the HOA have been filed in the Harris County Property Records with respect to the the Property. The HOA Maintenance Agreement must be approved and executed.

(d) In no event shall the Developer be paid and/or reimbursed from PID Bond Proceeds, or Assessment revenues for all Public Improvement Project Costs in an amount in excess of the Reimbursement Cap.

Section 3.03. Apportionment and Levy of Assessments.

(a) The City intends to levy Assessments on property located within the PID in accordance herewith and with the Service and Assessment Plans (as such plans are amended supplemented or updated from time to time) and the Assessment Ordinance on or before the Public Improvement Financing Date. The Assessments, if levied, shall be levied and a reimbursement agreement entered into, prior to the City's acceptance of the Public Improvements, subject to the City Council's discretion. At the time of such levy, the City intends to enter into a Reimbursement Agreement with the Developer. The City's apportionment and levy of Assessments shall be made in accordance with the PID Act.

(b) Concurrently with the levy of the Assessments, the Developer and its Affiliates shall execute and deliver a Landowner Consent in the form attached as Exhibit E for all land owned or controlled by Developer or its Affiliates, or otherwise evidence consent to the creation of the and the levy of Assessments therein and shall record evidence and notice of the Assessments in the real property records of Harris County. The City shall not levy Assessments on property within the PID without an executed Landowner Consent from each landowner within the PID whose property is being assessed.

Section 3.04. Transfer of Property. Notwithstanding anything to the contrary contained herein, no sale of property within the PID shall occur prior to the City's levy of Assessments in the PID unless the Developer (i) has notified the City sixty (60) days in advance of such sale and (ii) provides the City with an executed consent to the creation of the PID and the levy of Assessments, in a form acceptable to the City with respect to the purchased property. In addition, evidence of any transfer of property in the PID prior to the levy of Assessments on such property shall be provided to the City prior to the levy of Assessments on such property. The City shall require consent of each of the owners of Assessed Property in the PID to the levy of Assessments on each property and to the creation of the PID prior to Assessments being levied on such owner's property. The Developer understands and acknowledges that evidence of land transfer, the execution of the Landowner Consent, appraisal district certificate and property record recording will be required from each Assessed Property Owner in order to levy the Assessments. The Developer shall provide all necessary documentation to the City with respect to any land transfers.

ARTICLE IV

DEVELOPMENT

Section 4.01. Full Compliance with City Standards.

Development and use of the Property by Developer and its Affiliates, including, without limitation, the construction, installation, maintenance, repair, and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with the then current applicable City Regulations, the Development Standards and with the Concept Plan.

Section 4.02. Development Standards and Planned Development. As consideration for the City's obligations under this Agreement and in consideration for the reimbursement of the Public Improvement Project Costs, the Developer agrees that its development and use of the Property, including, without limitation, the construction, installation, maintenance, repair and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with the City Regulations, the Development Standards attached hereto as Exhibit D, the Concept Plan attached hereto as Exhibit J and the PD attached as Exhibit B. Any material changes (as determined by the City) to the PD, the Concept Plan or the Development Standards attached hereto must be approved by the City. Upon approval by the City of an updated PD, Concept Plan or Development Standards, this Agreement shall be deemed amended to include such approved updated PD.

Section 4.03. Property Acquisition. With the exception of the acquisition of easement rights as set forth in Article VI hereof, the Parties acknowledge that the Developer is responsible for the acquisition of certain off-site property rights and interests to allow the Public Improvements to be constructed to serve the Property. The City agrees to allow Developer the use of any City easements, rights of way or owned property as is reasonably necessary for the construction and installation of the Public Improvements. If the Developer is unable to obtain such third-party rights-of-way, consents, or easements, the City agrees to take reasonable steps to secure same (subject to City Council authorization after a finding of public necessity), at Developer's cost, through the use of the City's power of eminent domain. Developer shall be responsible for funding

all reasonable and necessary legal proceeding/litigation costs, attorney's fees and related expenses, and appraiser and expert witness fees actually incurred by the City in the exercise of its eminent domain powers, such costs to be paid by the Developer.

Section 4.04. Conflicts. In the event of any conflict between this Agreement and any City Regulation, the City Regulations shall control.

Section 4.05. Replat. The Developer may submit a replat for all or any portion of the Property. Any replat shall be in conformance with City Regulations, the Concept Plan, the Development Standards and the PID and may require a prepayment of Assessments as set forth in the applicable SAP.

ARTICLE V

DEVELOPMENT CHARGES

Section 5.01. Plat Review Fees. Development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's preliminary and final plat review and approval process according to the fee schedule adopted by the City Council and in effect at the time of platting.

Section 5.02. Plan Review and Permit Fees. Development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's review of plans and specifications and issuance of permits (including building permits) for construction of the Public Improvements and any other improvements requiring City review, according to the fee schedule adopted by the City Council at the time of plan review and permit issuance.

Section 5.03. Inspection Fees. Development of the Property shall be subject to the payment to the City of inspection fees according to the fee schedule adopted by the City Council at the time of inspection.

Section 5.04. Park Fees. The Developer shall comply with all requirements for parkland or open space dedication requirements or fees in lieu of as well as any park development fees as set forth in the City Regulations.

Section 5.05. Inspection Fees. Development of the Property shall be subject to the payment to the City of inspection fees according to the fee schedule adopted by the City Council at the time of inspection, including re-inspection fees, if required.

Section 5.06. Impact Fees. All impact fees associated with the Development shall be paid pursuant to the City Regulations.

ARTICLE VI

[RESERVED]

ARTICLE VII

CONSTRUCTION OF THE PUBLIC IMPROVEMENTS

Section 7.01. Designation of Construction Manager, Construction Engineers.

(a) Prior to construction of any Public Improvement, Developer shall make, or cause to be made, application for any necessary permits and approvals required by City and any applicable Governmental Authority to be issued for the construction of the Public Improvements and shall obligate each general contractor, architect, and consultants who work on the Public Improvements to obtain all applicable permits, licenses or approvals as required by Applicable Law. The Developer shall require or cause the design, inspection and supervision of the construction of the Public Improvements to be undertaken in accordance with City Regulations, the Development Standards, the Concept Plan and Applicable Law.

(b) The Developer shall design and construct or cause the design and construction of the Public Improvements, together with and including the acquisition, at its sole costs, of any and all easements or fee simple title to such land necessary to provide for and accommodate the Public Improvements.

(c) Developer shall comply, or shall require its contractors to comply, with all local and state laws and regulations, including the City Regulations, regarding the design and construction of the Public Improvements applicable to similar facilities constructed by City, including, but not limited to, the requirement for payment, performance and two- year maintenance bonds for the Public Improvements at 100% of the items on the performance bond. Performance bonds must be at 120% of proposed public improvements, including storm water management, public utility extensions, roadways, detention ponds, and erosion control.

(d) Upon Completion of Construction of the Public Improvements, Developer shall provide City with a final cost summary of all Public Improvement Project Costs incurred and paid associated with the construction of that portion of the Public Improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by the "all bills paid" affidavits and lien releases executed by Developer and/or its contractors with regard to that portion of the Public Improvements. Evidence of payment to the applicable contractors and subcontractors shall be provided prior to the reimbursement of the costs of any portion of the Public Improvements.

(e) Developer agrees to require the contractors and subcontractors which construct the Public Improvements to provide payment, performance and two-year maintenance bonds in forms reasonably satisfactory to the City Engineer. Any surety company through which a bond is written shall be a surety company duly authorized to do business in the State of Texas, provided that the City Attorney has the right to reasonably reject any surety company regardless of such company's

authorization to do business in Texas. Evidence of payment and performance bonds shall be delivered to the City prior to Commencement of Construction of any such Public Improvements.

(f) Unless otherwise approved in writing by the City, all Public Improvements shall be constructed and dedicated to the City in accordance with City Regulations, the Development Standards and Applicable Law. The Public Improvements within each Phase shall reach Completion of Construction by the Public Improvement Completion Date.

(g) The Developer shall dedicate or convey by final plat or separate instrument, without cost to the City and in accordance with the Applicable Law, all property rights (which may be an easement) necessary for the construction, operation, and maintenance of the road, water, drainage, and sewer Public Improvements, at the completion of the Public Improvements and acceptance by the City.

Section 7.02. Construction Agreements. The Construction Agreements shall be let in the name of the Developer. The Developer's engineers shall prepare and provide, or cause the preparation and provision of all contract specifications and necessary related documents. The Developer shall provide all construction documents for the Public Improvements and shall acknowledge that the City has no obligations and liabilities thereunder. The Developer shall include a provision in the construction documents for the Public Improvements that the contractor will indemnify the City and its officers and employees against any costs or liabilities thereunder, as follows:

CITY OF TOMBALL, TEXAS ("CITY") SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR ANY LOSS, DAMAGE, INJURY OF ANY KIND OR CHARTER, INCLUDING DEATH, TO ANY PERSON, ENTITY, OR PROPERTY ARISING OUT OF OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF THE CONTRACTOR'S ACTS, INCLUDING NEGLIGENCE, WHETHER

SUCH ACTS OR NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, OR SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, OR SUPPLIES OBTAINED IN FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT

The Developer or its designee shall administer the contracts. The Public Improvement Project Costs, which are estimated on Exhibit C, shall be (i) paid by the Developer or caused to be paid by the Developer, and reimbursed by the Assessments levied pursuant to the terms of a Reimbursement Agreement or (ii) paid from the proceeds of PID Bonds issued to pay the Public Improvement Project Costs.

(a) The following requirements apply to Construction Agreements for Public Improvements:

(i) Plans and specifications shall comply with all Applicable Law, the Development Standards and City Regulations and all Plans and Specification shall be reviewed and approved by the City prior to the issuance of permits. The City shall have thirty (30) business days from its receipt of the first submittal of the Plans and Specifications to approve or deny the Plans and Specifications or to provide comments to the submitter. If any approved Plans and Specifications are amended or supplemented, the City shall have thirty (30) business days from its receipt of such amended or supplemented Plans and Specifications to approve or deny the Plans and Specification or provide comments back to the submitter. Any written City approval or denial must be based on compliance with applicable City Regulations or other regulatory agencies that have jurisdiction over the Development.

(ii) Each Construction Agreement shall provide that the Contractor is an independent contractor, independent of and not the agent of the City and that the Contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and

(iii) Each Construction Agreement for improvements not yet under construction shall provide that the Contractor shall indemnify the City, its officers and employees for any costs or liabilities thereunder and for the negligent acts or omissions of the Contractor.

(b) City's Role.

The City shall have no responsibility for the cost of planning, design, engineering construction, furnishing/equipping the Public Improvements (before, during or after construction) except to the extent of the reimbursement the Public Improvements Project Costs as set forth in this Agreement. The Developer will not hold the City responsible for any costs of the Public Improvements other than the reimbursements described in this Agreement. The City shall have no

liability for any claims that may arise out of design or construction of the Public Improvements, and the Developer shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to the Developer, not to the City, for payment of all costs and valid claims associated with construction of the Public Improvements.

Section 7.03. Project Scope Verification.

(a) The Developer will from time to time, as reasonably requested by the City Representative, verify to the City Representative that the Public Improvements are being constructed substantially in accordance with the Plans and Specifications approved by the City. To the extent the City has concerns about such verification that cannot be answered by the Developer, to the City's reasonable satisfaction, the Developer will cause the appropriate architect, engineer or general contractor to consult with the Developer and the City regarding such concerns.

Section 7.04. Joint Cooperation; Access for Planning and Development.

During the planning, design, development and construction of the Public Improvements, the parties agree to cooperate and coordinate with each other, and to assign appropriate, qualified personnel to this project. The City staff will make reasonable efforts to accommodate urgent or emergency requests during construction. In order to facilitate a timely review process, the Developer shall cause the architect, engineer and other design professionals to attend City meetings if requested by the City.

Section 7.05. City Not Responsible.

By performing the functions described in this Article, the City shall not, and shall not be deemed to, assume the obligations or responsibilities of the Developer, whose obligations under this Agreement and under Applicable Law shall not be affected by the City's exercise of the functions described in this Article. The City's review of any Plans and Specifications is solely for the City's own purposes, and the City does not make any representation or warranty concerning the appropriateness of any such Plans and Specifications for any purpose. The City's approval of (or failure to disapprove) any such Plans and Specifications, including the Site Plan, submitted with such Plans and Specifications and any revisions thereto, shall not render the City liable for same, and the Developer assumes and shall be responsible for any and all claims arising out of or from the use of such Plans and Specifications.

Section 7.06. Construction Standards and Inspection.

The Public Improvements will be installed within the public right-of-way or in easements granted to the City. Such easements may be granted at the time of final platting in the final plat or by separate instrument. The Public Improvements shall be constructed and inspected in accordance with applicable state law, and City Regulations, and all other applicable development requirements, including those imposed by any other governing body or entity with jurisdiction over the Public Improvements, and this Agreement, provided, however, that if there is any conflict, the regulations of the governing body or entity with jurisdiction over the Public Improvement being constructed shall control.

Section 7.07. Public Improvements to be Owned by the City – Title Evidence.

The Developer shall furnish to the City a preliminary title report for land with respect to the Public Improvements, including any related rights-of-way, easements, and open spaces if any, to be acquired and accepted by the City from the Developer and not previously dedicated or otherwise conveyed to the City, for review and approval at least 30 calendar days prior to the transfer of title of a Public Improvement to the City. The City Representative shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the exercise of reasonable judgment, the City Representative shall review the title report using their normal and customary review process for an easement and shall only object to matters in the title report if they would do so for any other easement granted directly to the City or to be obtained by the City for a public improvement. In the event the City Representative does not approve the preliminary title report, the City shall not be obligated to accept title to the Public Improvement until the Developer has cured such objections to title to the satisfaction of the City Representative.

Section 7.08. Public Improvement Constructed on City Land or the Property.

If the Public Improvement is on land owned by the City, the City hereby grants to the Developer a temporary easement to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of the Public Improvement. If the Public Improvement is on land owned by the Developer, the Developer shall dedicate easements by plat or shall execute and deliver to the City such access and maintenance easements as the City may reasonably require in recordable form, and the Developer hereby grants to the City a permanent access and maintenance easement by plat or separate instrument to enter upon such land for purposes related to inspection and maintenance of the Public Improvement. The grant of the permanent easement shall not relieve the Developer of any obligation to grant the City title to property and/or easements related to the Public Improvement as required by this Agreement or as should in the City's reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Public Improvement. The provisions for inspection and acceptance of such Public Improvement otherwise provided herein shall apply.

Section 7.09. Additional Requirements.

In connection with the design and construction of the Public Improvements, the Developer shall take or cause the following entities or persons to take the following actions and to undertake the following responsibilities:

(a) The Developer shall provide to the City electronic copies of the Plans and Specifications for the Public Improvements (including revisions) as such Plans and Specifications are currently in existence and as completed after the date hereof and shall provide the City one complete set of record drawings (in electronic format) for the Public Improvements, in accordance with Applicable Law;

(b) In accordance with the requirements between the Developer and the City with regard to the development and construction of the Public Improvements, the Developer or such

person selected by and contracting with the Developer shall provide the City with a copy of the detailed construction schedule outlining the major items of work of each major construction contractor. Such schedule shall be updated monthly and submitted to the City.

(c) The Developer shall provide construction documents, including the Plans and Specifications to the City, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas at the time the construction documents are submitted to the City for approval;

(d) The Developer shall provide the City with reasonable advance notice of any scheduled construction meetings as set forth in the construction contracts for the Public Improvements, and shall permit the City to attend and observe such meetings as the City so chooses in order to monitor the project;

(e) The Developer or any general contractor shall comply with, and shall require that its agents and subcontractors comply with, all Applicable Laws regarding the use, removal, storage, transportation, disposal and remediation of hazardous materials;

(f) The Developer or any general contractor shall notify and obtain the City's approval for all field changes that directly result in material changes to the portion of the Plans and Specifications for the Public Improvements that describe the connection of such improvements with City streets, storm sewers and utilities;

(g) Upon notice from the City, the Developer shall or shall cause any general contractor to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the general contractor or its subcontractors to property or facilities of the City during construction of the Public Improvements and the City shall pay for any damage repair from funds on hand from the Developer pursuant to the Professional Services Agreement, as such funds are available, or from other funds of the City. If the City pays for such damage repair from other City funds, the Developer shall reimburse or cause the general contractor to reimburse the City for out-of-pocket costs actually incurred by the City that are directly related to the City's necessary repairs of such damage;

(h) Upon notice from the City, the Developer shall promptly cause the correction of defective work and shall cause such work to be corrected in accordance with the construction contracts for the Public Improvements and with City Regulations;

(i) If the Developer performs any soils, construction and materials testing during construction of the Public Improvements, the Developer shall make available to the City copies of the results of all such tests; and

(j) If any of the foregoing entities or persons shall fail in a material respect to perform any of its obligations described above (or elsewhere under this Agreement), the Developer shall use its good faith efforts to enforce such obligations against such entities or persons, or the Developer may cure any material failure of performance as provided herein; and

(k) The Developer shall provide any other information or documentation or services required by City Regulations; and

(l) The Developer shall allow the City Representative to conduct a reasonable pre-final and final inspection of the Public Improvements. Upon acceptance by the City of the Public Improvements, the City shall become responsible for the maintenance of the Public Improvements and making any bond or warranty claim, if applicable.

Section 7.10. Revisions to Scope and Cost of Public Improvements.

(a) The Public Improvement Project Costs, as set forth in Exhibit C, may be modified or amended from time to time upon the approval of the City Representative, provided that the total cost of the Public Improvements shall not exceed such amounts as set forth in the applicable SAP or the Project and Financing Plan. Should the Public Improvements be amended by the City Council in a SAP pursuant to the PID Act, the City Representative shall be authorized to make corresponding changes to the applicable Exhibits attached hereto and shall keep official record of such amendments.

(b) Should the Public Improvement Project Costs exceed the amounts set forth in the SAPs, the Developer shall be responsible for such excess costs and such excess costs shall not be reimbursed by the City. The City shall only reimburse the Public Improvement Project Costs in the amounts set forth in the applicable SAP. The estimated costs of the Public Improvements as set forth in the PID Petition shall not be exceeded.

Section 7.11. City Police Powers.

The Developer recognizes the authority of the City pursuant to the Texas Constitution together with the City's charter and ordinances to exercise its police powers in accordance with applicable laws to protect the public health, safety, and welfare. The City retains its police powers over the Developer's or its general contractor's construction activities on or at the Property, and the Developer recognizes the City's authority to take appropriate enforcement action in accordance with Applicable Law to provide such protection. No lawful action taken by the City pursuant to these police powers shall subject the City to any liability under this Agreement, including without limitation liability for costs incurred by any general contractor or the Developer, and as between the Developer and the City, any such costs shall be the sole responsibility of the Developer and any of its general contractors and shall not be reimbursable from PID Bond Proceeds.

Section 7.12. Title and Mechanic's Liens.

(a) Title. The Developer agrees that the Public Improvements shall not have a lien or cloud on title upon their dedication to and acceptance by the City.

(i) Mechanic's Liens. Developer shall not create nor allow or permit any liens, encumbrances, or charges of any kind whatsoever against the Public Improvements arising from any work performed by any contractor by or on behalf of the Developer. The Developer shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Public Improvements for work or materials furnished to the Developer in connection with any construction, improvements, renovation, maintenance or repair thereof made by the Developer or any contractor, agent or representative of the Developer. The Developer shall cause any such claim of lien to be

fully discharged prior to the earlier of (i) the date of acceptance of the applicable Public Improvement by the City of the related Public Improvement or (ii) 180 days.

Section 7.13. City Consents.

Any consent or approval by or on behalf of the City required in connection with the design, construction, improvement or replacement of the Public Improvements or otherwise under this Agreement shall not be unreasonably withheld, delayed, or conditioned. Any review associated with any determination to give or withhold any such consent or approval shall be conducted in a timely and expeditious manner with due regard to the cost to the Developer associated with delay.

Section 7.14. Right of the City to Make Inspection.

(a) At any time during the construction of the Public Improvements, the City shall have the right to enter the Property for the purpose of inspection of the progress of construction on the Public Improvements; provided, however, the City Representative shall comply with reasonable restrictions generally applicable to all visitors to the Development that are imposed by the Developer or its General Contractor or subcontractors. The Developer shall pay the standard City inspection fees.

(b) Inspection of the construction of all Public Improvements shall be by the City Representative or his/her designee. In accordance with Sections 5.03, the Developer shall pay the inspection fee which may be included as a Public Improvement Project Cost.

(c) City may enter the Property in accordance with customary City procedures and Applicable Law to make any repairs or perform any maintenance of Public Improvements which the City has accepted for maintenance. If, during construction of the Public Improvements, the Developer is in default under this Agreement beyond any applicable cure period or in the event of an emergency which is not being timely addressed, the City may enter the Property to make any repairs to the Public Improvements that have not been accepted for maintenance by the City, of every kind or nature, which the Developer is obligated under this Agreement to repair or maintain but which the Developer has failed to perform after reasonable notice (other than in the case of an emergency in which notice is impossible or impractical). The Developer shall be obligated to reimburse the City the reasonable costs incurred by the City for any such repairs. Nothing contained in this paragraph shall be deemed to impose on the City any obligation to actually make repairs or alterations on behalf of the Developer.

Section 7.15. Competitive Bidding. The construction of the Public Improvements (which are funded from Assessments) is anticipated to be exempt from competitive bidding pursuant to Texas Local Government Code Section 252.022(a)(9). In the event that the actual costs of the Public Improvement do not meet the parameters for exemption from the competitive bid requirement, then either competitive bidding or alternative delivery method may be utilized by the

City as allowed by Applicable Law. The Public Improvements are not to be exempt from State or City sales tax.

ARTICLE VIII

PAYMENT OF PUBLIC IMPROVEMENTS

Section 8.01. Overall Requirements.

(a) The City shall not be obligated to provide funds for any Public Improvement except from the proceeds of the PID Bonds or from Assessments pursuant to a Reimbursement Agreement. The City makes no warranty, either express or implied, that the proceeds of the PID Bonds available for reimbursement of the Public Improvement Project Costs will be sufficient for the construction or acquisition of all of the Public Improvements. Any costs of the Public Improvements in excess of the available PID Bond Proceeds or Assessments pursuant to a Reimbursement Agreement, shall not be paid or reimbursed by the City. The Developer acknowledges and agrees that any lack of availability of monies in the Project Funds established under the Indentures to reimburse the costs of the Public Improvements shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for the Public Improvements required by this Agreement, or any other agreement to which the Developer is a party, or any governmental approval to which the Developer or Property is subject.

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

(c) The City's obligation with respect to the reimbursement from Assessments of the Public Improvement Project Costs as finally set forth in the Service and Assessment Plan, shall be limited to the lower of Actual Costs or the available Net PID Bond Proceeds or Assessment revenues, and shall be reimbursed solely from amounts on deposit in the Project Funds from the sale of the PID Bonds as provided herein and in the Indentures, or from Assessments collected for the reimbursement or payment of such costs pursuant to Reimbursement Agreement. The Developer agrees and acknowledges that it is responsible for all costs and all expenses related to the Public Improvements in excess of the Reimbursement Cap.

(d) The City shall have no responsibility whatsoever to the Developer with respect to the investment of any funds held in the Project Fund by the Trustee under the provisions of the Indenture, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Project Fund to reimburse the Public Improvement Project Costs in the PID. The obligation of Developer to pay the Assessments is not in any way dependent on the availability of amounts in the Project Fund to pay for all or any portion of the Public Improvements Project Costs hereunder.

Section 8.02. Remaining Funds after Completion of a Public Improvement.

The Service and Assessment Plan shall be updated or amended, as applicable, such that the costs of the Public Improvements in the SAP match the costs set forth in the applicable construction contracts; provided that such adjustment of the SAP does not affect the benefit analysis. Then, the

Completion of Construction of a Public Improvement and reimbursement for such Public Improvement, there are Cost Underruns, any remaining budgeted cost(s) may be available to reimburse Cost Overruns on any other Public Improvement with the approval of the City Representative, such approval not to be unreasonably withheld, at completion of the Public Improvements and provided that all Public Improvements, as set forth in the Service and Assessment Plan are undertaken at least in part. The elimination of a category of Public Improvements in a PID Phase as set forth in the Service and Assessment Plan will require an amendment to the Service and Assessment Plan. Upon receipt of all acceptance letters from the City for the Public Improvements within an improvement category as set forth in the Service and Assessment Plan, any Underruns from that category may be released to reimburse for Overruns in another improvement category, as approved by the City.

Section 8.03. Payment Process for Public Improvements.

(a) The City shall authorize reimbursement of the Public Improvement Project Costs from (i) PID Bond Proceeds or from (ii) Assessments collected in the PID as set forth in 8.04 below. The Developer shall submit a Payment Certificate to the City for Public Improvement Project Costs. The form of the Payment Certificate is set forth in Exhibit F, as may be modified by the applicable Indenture or Reimbursement Agreement. The City shall review the sufficiency of each Payment Certificate with respect to compliance with this Agreement, compliance with the Development Standards, the Concept Plan and Applicable Law, and compliance with the applicable SAP and Plans and Specifications within fifteen (15) business days of receipt from the Developer. After review, the City shall send notice to the Developer of what is approved in each Payment Certificate and what is denied and will notify Developer of additional documentation needed. Approved costs in a Payment Certificate shall be forwarded for payment in a timely manner and the City will work with the Developer to resolve amounts not approved in each Payment Certificate.

(b) The City shall reimburse the Public Improvement Project Costs as set forth in Exhibit C and the SAP, from funds available pursuant to the applicable Indenture or Reimbursement Agreement.

(c) Reimbursement to the Developer and the City for administrative costs relating to the creation of the PID, the levy of assessments and issuance of the PID Bonds may be distributed at closing of the applicable series of PID Bonds pursuant to a Closing Disbursement Request, in the form attached as Exhibit G.

Section 8.04. Public Improvements Reimbursement from Assessment Fund In the Event of a Non-Issuance of PID Bonds.

(a) The reimbursement for costs of the Public Improvements set forth in Exhibit C and in the Service and Assessments Plan shall be made on an annual basis from Assessments levied by the City for the Public Improvements pursuant to Chapter 372, Texas Local Government Code, as amended. Such reimbursement shall be made pursuant to the terms and provisions of one or more Reimbursement Agreements. Such Reimbursement Agreements shall set forth the terms of the annual reimbursement for the costs of the Public Improvements.

(b) Reimbursement or payment of the costs of the Public Improvements shall only be made from the levy of Assessments within the PID as set forth herein.

(c) The term, manner and place of payment or reimbursement to the Developer under this Section shall be set forth in the Reimbursement Agreement.

(d) Reimbursement or payment shall be made only for the costs of the Public Improvements as set forth in this Agreement, the Service and Assessment Plan or in the Reimbursement Agreement, as approved by the City. Any additional public improvements other than the Public Improvements constructed by the Developer and dedicated to the City, shall not be subject to payment or reimbursement under the terms of this Agreement.

Section 8.05. Rights to Audit.

(a) The City shall have the right to audit, upon reasonable notice and at the City's own expense, records of the Developer with respect to the expenditure of funds to pay Public Improvement Project Costs. Upon written request by the City, the Developer shall give the City or its agent, access to those certain records controlled by, or in the direct or indirect possession of, the Developer (other than records subject to legitimate claims of attorney-client privilege) with respect to the expenditure of Public Improvement Project Costs, and permit the City to review such records in connection with conducting a reasonable audit of such fund and account. The Developer shall make these records available to the City electronically or at a location that is reasonably convenient for City staff.

(b) The City and the Developer shall reasonably cooperate with the assigned independent auditors (internal or external) in this regard, and shall retain and maintain all such records for at least 2 years from the date of Completion of Construction of the Public Improvements. All audits must be diligently conducted and once begun, no records pertaining to such audit shall be destroyed until such audit is completed.

ARTICLE IX

REPRESENTATIONS AND WARRANTIES

Section 9.01. Representations and Warranties of City.

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

(a) Due Authority; No Conflict. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act). The City has all requisite power and authority to execute this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute legal, valid and binding obligations enforceable against the City in accordance with the terms subject to principles of governmental immunity and the enforcement of equitable rights. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any

agreement or instrument to which the City is a Party, or by which the City is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(b) Due Authority; No Litigation. No litigation is pending or, to the knowledge of the City, threatened in any court to restrain or enjoin the construction of or the Public Improvements or the City's payment and reimbursement obligations under this Agreement, or otherwise contesting the powers of the City or the authorization of this Agreement or any agreements contemplated herein.

Section 9.02. Representations and Warranties of Developer.

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

(a) Due Organization and Ownership. The Developer is Texas corporation validly existing under the laws of the State of Texas and is duly qualified to do business in the State of Texas; and that the person executing this Agreement on behalf of it is authorized to enter into this Agreement.

(b) Due Authority; No Conflict. The Developer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Developer and constitute the Developer's legal, valid and binding obligations enforceable against the Developer in accordance with their terms. The consummation by the Developer of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Developer, or any of the terms of any agreement or instrument to which the Developer is a Party, or by which the Developer is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(c) Consents. No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of the Developer in connection with the execution and delivery of this Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.

(d) Litigation/Proceedings. To the best knowledge of the Developer, after reasonable inquiry, there are no pending or, to the best knowledge of the Developer, threatened, judicial, municipal or administrative proceedings, consent decree or, judgments which might affect the Developer's ability to consummate the transaction contemplated hereby, nor is there a preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and there is no statute, rule, regulation, or executive order promulgated or enacted by a governmental entity, that is in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement.

(e) Legal Proceedings. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, any of the principals of the Developer and any key person or their respective Affiliates and representatives which the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of the Developer under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

ARTICLE X

MAINTENANCE OF LANDSCAPE IMPROVEMENTS

Section 10.01. Mandatory Home Owners' Association.

(a) The Developer will create a mandatory homeowners' association ("HOA") over the portion of the Property then being developed as single-family residential with attached townhomes ("the "Single Family Property"), which HOA, through its conditions and restrictions filed of record in the property records of Harris County, shall be required to assess and collect from owners annual fees in an amount calculated to maintain the open spaces, common areas, right-of-way irrigation systems, raised medians and other right-of-way landscaping, detention areas, drainage areas, screening walls, trails, lawns, landscaped entrances to the Single Family Property and any other common improvements or appurtenances (the "HOA Maintained Improvements"). Maintenance of any HOA Maintained Improvements on land owned by the City shall be pursuant to a maintenance agreement between the HOA and the City (the "HOA Maintenance Agreement").

(b) While the Parties anticipate that the HOA established to maintain and operate the HOA Maintained Improvements, will adequately perform such duties, in the event that the City determines that the HOA is not adequately performing the duties for which it was created, which non-performance shall be evidenced by violations of the HOA Maintenance Agreement, applicable deed restrictions and/or applicable City ordinances, the City reserves the right to levy an assessment each year equal to the actual costs of operating and maintaining the HOA Maintained Improvements that are owned by the City. The City agrees that it will not levy such assessments without first giving the HOA written notice of the deficiencies and providing the HOA with sixty (60) days in which to cure the deficiencies.

(c) Covenants, conditions and restrictions for the HOA must be filed and the HOA Maintenance Agreement, if any, must be approved and executed before any Assessments are levied by the City.

ARTICLE XI

TERMINATION EVENTS

Section 11.01. Developer Termination Events.

(a) The Developer may terminate this Agreement, (i) upon an Event of Default by the City, or (ii) if the City does not enter into a Reimbursement Agreement or levy assessments by the Public Improvement Financing Date.

Section 11.02. City Termination Events.

(a) The City may terminate this Agreement for each Phase if the City determines both (i) not to issue PID Bonds by the Public Improvement Financing Date, and (ii) not to levy Assessments and enter into a Reimbursement Agreement Development by the Public Improvement Financing Date.

(b) The City may terminate this Agreement and any Reimbursement Agreement upon an uncured Event of Default by the Developer pursuant to Article XIV herein.

(c) The City may terminate this Agreement and any Reimbursement Agreement, if Commencement of Construction of the private horizontal improvements within the Development has not occurred within three (3) years of the Effective Date.

(d) The City may terminate this Agreement, and any Reimbursement Agreement, at any time if the Public Improvements do not reach Public Improvement Completion Date, as may have been extended pursuant to the term of this Agreement.

Section 11.03. Termination Procedure.

If either Party determines that it wishes to terminate this Agreement pursuant to this Article, such Party must deliver a written notice to the other Party specifying in reasonable detail the basis for such termination and electing to terminate this Agreement. Upon such a termination, the Parties hereto shall have no duty or obligation one to the other under this Agreement, with the exception of any of Developer's Public Improvement Project Costs that were previously advanced or incurred as of the date of termination, provided that a Payment Certificate for such Public Improvement Project Costs is submitted within ninety (90) days of the termination and is approved by the City pursuant to its normal and usual process for approving such Payment Certificate. The City must approve such Payment Certificate within thirty (30) days or submit to the Developer its objections/issues with such Payment Certificate and reasonably consult with the Developer to cure any insufficiencies in the Payment Certificate within an additional thirty (30) days.

Section 11.04. City Actions Upon Termination.

Upon termination the Developer shall have no claim or right to any further payments for Public Improvements Project Costs pursuant to this except that, (i) any Public Improvements completed and accepted by the City or (ii) Public Improvement Project Costs submitted pursuant to a Payment Certificate and approved by the City shall still be subject to reimbursement.

ARTICLE XII

TERM

This Agreement shall terminate upon the earlier of: (i) the final maturity date of any PID Bonds issued by the City, (ii) the date on which the City and the Developer discharge all of their obligations hereunder, including Completion of Construction of the Public Improvements and payment of or reimbursement for the Public Improvement Project Costs pursuant to this Agreement (up to the Reimbursement Cap), (iii) an Event of Default under Article XIII, or (iv) the occurrence of a termination event under Article XI. Notwithstanding the above, the provisions of Article VII of this Agreement shall survive termination.

ARTICLE XIII

DEFAULT AND REMEDIES

Section 13.01. Developer Default.

Each of the following events shall be an “Event of Default” by the Developer under this Agreement:

(a) The Developer shall fail to pay to the City any monetary sum hereby required of it as and when the same shall become due and payable and shall not cure such default within thirty (30) calendar days after the later of the date on which written notice thereof is given by the City to the Developer, as provided in this Agreement. The Developer shall fail in any material respect to maintain any of the insurance or bonds required by this Agreement; provided, however, that if a contractor fails to maintain any of the insurance or bonds required by this Agreement, the Developer shall have thirty (30) calendar days to cure.

(b) The Developer shall fail to comply in any material respect with any term, provision or covenant of this Agreement (other than the payment of money to the City), and shall not cure such failure within ninety (90) calendar days after written notice thereof is given by the City to the Developer;

(c) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;

(d) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor’s rights;

(e) The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days;

(f) The failure by Developer or any Affiliate to pay Impositions, and Assessments on property owned by the Developer and/or any Affiliates within the PID if such failure is not cured within thirty (30) calendar days after written notice by the City; OR

(g) Any representation or warranty confirmed or made in this Agreement by the Developer was untrue in any material respect as of the Effective Date.

Section 13.02. Notice and Cure Period.

(a) Before any Event of Default under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such Event of Default shall notify, in writing, the Party alleged to have failed to perform the alleged Event of Default and shall demand performance (with the exception of 13.01(f) above). Except with respect to cure periods set forth in 13.01 above, which shall be controlling, 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) calendar days of the receipt of such notice (or thirty (30) calendar days in the case of a monetary default), with completion of performance within ninety (90) calendar days.

(b) 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 by Force Majeure, 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 and the length of the Force Majeure event is reasonably expected to last 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. The number of days a Force Majeure event is in effect shall be determined by the City based upon commercially reasonable standards.

Section 13.03. City's Remedies.

With respect to the occurrence of an Event of Default the City may pursue the following remedies:

(a) The City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, and termination of this Agreement. The City shall not terminate this Agreement unless it delivers to the Developer a second notice expressly providing that the City will terminate within thirty (30) additional days. Termination or non-termination of this Agreement upon a Developer Event of Default shall not prevent the City from suing the Developer for specific performance, damages, actual damages, excluding punitive, special and consequential damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination. In the event the Developer fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, then to the extent such failure constitutes an Event of Default hereunder, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the amount so paid and the reasonable out

of pocket costs incurred by the City in said performance shall be due and payable by the Developer to the City within thirty (30) days after the Developer's receipt of an itemized list of such costs.

(b) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity.

(c) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

Section 13.04. City Default.

Each of the following events shall be an Event of Default by the City under this Agreement:

(a) So long as the Developer has complied with the terms and provisions of this Agreement, the City shall fail to pay to the Developer any monetary sum hereby required of it and shall not cure such default within thirty (30) calendar days after the later of the date on which written notice thereof is given to the City by the Developer.

(b) The City shall fail to comply in any material respect with any term, provision or covenant of this Agreement, other than the payment of money, and shall not cure such failure within sixty (60) calendar days after written notice thereof is given by the Developer to the City.

Section 13.05. Developer's Remedies.

(a) Upon the occurrence of any Event of Default by the City, the Developer may pursue any legal remedy or remedies specifically including damages as set forth below (specifically excluding specific performance and other equitable remedies), and termination of this Agreement; provided, however, that the Developer shall have no right to terminate this Agreement unless the Developer delivers to the City a second notice which expressly provides that the Developer will terminate within thirty (30) days if the default is not addressed as herein provided.

(b) No remedy herein conferred or reserved is intended to be inclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing.

(c) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

Section 13.06. No Waiver of Immunity.

(a) Nothing contained in this Agreement shall be deemed to waive the City's governmental immunity nor the official immunity of any City officer, official, employee or agent.

(b) Should a court of competent jurisdiction determine the City's immunity from suit is waived in any manner other than as provided in Subchapter I of Chapter 271, Texas Local Government Code, as amended, the Parties hereby acknowledge and agree that in such suit against the City for breach of this Agreement:

(i) The total amount of money awarded is limited to actual damages in an amount not to exceed the balance due and owed by City under this Agreement or any Reimbursement Agreement and is payable solely from Assessment revenues;

(ii) The recovery of damages against City or the Developer may not include consequential damages or exemplary damages;

(iii) The Parties may not recover attorney's fees; and

(iv) The Parties are not entitled to specific performance or injunctive relief against the City.

Section 13.07. Limitation on Damages.

In no event shall any Party have any liability under this Agreement for any exemplary or consequential damages.

Section 13.08. Waiver.

Forbearance by the non-defaulting Party to enforce one or more of the remedies herein provided upon the occurrence of an Event of Default by the other Party shall not be deemed or construed to constitute a waiver of such default. One or more waivers of a breach of any covenant, term or condition of this Agreement by either Party hereto shall not be construed by the other Party as a waiver of a different or subsequent breach of the same covenant, term or condition. The consent or approval of either Party to or of any act by the other Party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any other subsequent similar act.

ARTICLE XIV

INSURANCE, INDEMNIFICATION AND RELEASE

Section 14.01. Insurance.

With no intent to limit any contractor's liability or obligation for indemnification, the Developer shall maintain or cause to be maintained, by the persons constructing the Public Improvements, certain insurance, as provided below in full force and effect at all times during construction of the Public Improvements and shall require that the City is named as an additional insured under such contractor's insurance policies.

(a) With regard to the obligations of this Agreement, the Developer shall obtain and maintain in full force and effect at its expense, or shall cause each contractor to obtain and maintain at their expense, the following policies of insurance and coverage:

(i) Commercial general liability insurance insuring the City, contractor and the Developer against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the activities of Developer, the contractor, the City and their respective officers, directors, agents, contractors, or employees, in the amount of

\$500,000 Per Occurrence or a limit equal to the amount of the contract amount, \$2,000,000 General Aggregate Bodily Injury and Property Damage. The contractor may procure and maintain a Master or Controlled Insurance policy to satisfy the requirements of this section, which may cover other property or locations of the contractor and its affiliates, so long as the coverage required in this section is separate;

(ii) Worker's Compensation insurance as required by law;

(iii) Business automobile insurance covering all operations of the contractor pursuant to the Construction Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability.

(iv) To the extent available, each policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City;

(v) Each policy of insurance with the exception of Worker's Compensation and professional liability shall be endorsed to include the City (including its former, current, and future officers, directors, agents, and employees) as additional insureds;

(vi) Each policy, with the exception of Worker's Compensation and professional liability, shall be endorsed to provide the City sixty (60) days' written notice prior to any cancellation, termination or material change of coverage; and

(vii) The Developer shall cause each contractor to deliver to the City the policies, copies of policy endorsements, and/or certificates of insurance evidencing the required insurance coverage before the Commencement of Construction of the Public Improvements and within 10 days before expiration of coverage, or as soon as practicable, deliver renewal policies or certificates of insurance evidencing renewal and payment of premium. On every date of renewal of the required insurance policies, the contractor shall cause a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition the contractor shall within ten (10) business days after written request provide the City with the Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies).

Section 14.02. Waiver of Subrogation Rights.

The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability Insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City.

Section 14.03. Additional Insured Status.

With the exception of Worker's Compensation Insurance and any Professional Liability Insurance, all insurance required pursuant to this Agreement shall include and name the City as

additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the City under Texas law including products/completed operations.

Section 14.04. Certificates of Insurance.

Certificates of Insurance and policy endorsements in a form satisfactory to City shall be delivered to City prior to the commencement of any work or services on the Public Improvements. All required policies shall be endorsed to provide the City with sixty (60) days advance notice of cancellation or non-renewal of coverage. The Developer shall provide sixty (60) days written notice of any cancellation, non-renewal or material change in coverage for any of the required insurance in this Article.

On every date of renewal of the required insurance policies, the Developer shall cause (and cause its contractors) to provide a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Developer shall, within ten (10) business days after written request, provide the City with certificates of insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the certificates of insurance and the policy endorsements (including copies of such insurance policies) to the City is a condition precedent to the payment of any amounts to the Developer by the City.

Section 14.05. Carriers.

All policies of insurance required to be obtained by the Developer and its contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to and as reasonably approved by City, and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by the Developer's and its contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

Section 14.06. INDEMNIFICATION.

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S ACT OR OMISSION, INCLUDING BUT NOT LIMITED TO BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, ANY ACT OR OMISSION, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS,

EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

DEVELOPER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND DEVELOPER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

ARTICLE XV

GENERAL PROVISIONS

Section 15.01. 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 or other electronic transmittal, hand delivery, overnight courier, or by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the addresses set forth below or at such other addresses as may be specified in writing by any Party hereto to the other parties hereto. Each notice which shall be mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purpose at such time as it is received by the addressee (with return receipt, the delivery receipt or the affidavit of messenger being deemed conclusive evidence of such receipt) at the following addresses:

To the City: City Manager
 401 Market Street
 Tomball, TX 77375

With a copy to: Attn: City Attorney
 Olson & Olson, LLP
 2727 Allen Parkway, Suite 600
 Houston, TX 77019

To the Developer: Attn: Chet Wignall
 History Maker Homes
 7906 N. Sam Houston Parkway West, Suite 102
 Houston, Texas 77064

With a copy to: Attn: Timothy Green
 c/o Coats Rose, P.C.
 9 Greenway Plaza, Suite 1000
 Houston, Texas 77046

Section 15.02. Make-Whole Provision.

(a) If in any calendar year the City issues debt obligations that would be qualified tax-exempt obligations but for the issuance or proposed issuance of PID Bonds, the Developer shall pay to the City a fee (the “PID Bond Fee”) to compensate the City for the interest savings the City would have achieved had the debt issued by the City been qualified tax-exempt obligations. Prior to issuance of any PID Bonds, the City’s financial advisor shall calculate the PID Bond Fee based on the issued and planned debt issuances for the City and shall notify the Developer of the total amount of the PID Bond Fee prior to the issuance of the PID Bonds. The Developer agrees to pay the PID Bond Fee to the City within ten (10) business days after receiving notice from the City of the amount of PID Bond Fee due to the City. If the City has not forgone the ability to issue a series of obligations as qualified tax exempt obligations, the PID Bond Fee shall be held in a segregated account of the City and if the total amount of debt obligations sold or entered into by the City in the calendar year in which the PID Bonds are issued are less than the bank qualification limits (currently \$10 million per calendar year), then the PID Bond Fee shall be returned to the Developer. The City shall not be required to sell any series of PID Bonds until the Developer has paid the estimated PID Bond Fee.

(b) If the City is planning to issue debt obligations as qualified tax exempt obligations prior to the issuance of PID Bonds in any calendar year, the City may (but is not obligated to) notify the Developer that it is planning to issue qualified tax-exempt obligations that may limit the amount of debt that the City can issue in a calendar year. In connection with the delivery of such notice, the City’s financial advisor shall provide a calculation of the interest savings that the City would achieve by issuing the obligations the City plans to issue in the year as qualified tax-exempt obligations as opposed to non-qualified tax exempt obligations. If following the receipt of such notice the Developer asks the City to forego designating the obligations as qualified tax exempt obligations in order to preserve capacity for PID Bonds, the Developer shall pay to the City a fee to compensate the City for the interest savings the City would have achieved had the debt issued

by the City been qualified tax-exempt obligations. The Developer agrees to pay the PID Bond Fee to the City within ten (10) business days after receiving notice from the City of the amount of PID Bond Fee due to the City. Upon receipt of the PID Bond Fee, the City agrees not to designate the obligations planned for issuance as qualified tax exempt obligations. Such payment is compensation to the City for choosing to forego the designation of obligations as qualified tax exempt obligations, and the PID Bond Fee may be used for any lawful purpose of the City.

Section 15.03. Assignment.

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. The obligations, requirements or covenants to develop the Property, including construction of the Public Improvements may be assigned to any Affiliate thereof without the prior written consent of the City. The obligations, requirements or covenants to the development of the Property, including construction of the Public Improvements shall not be assigned to any non-Affiliate without the prior written consent of the City Council, which consent shall not be unreasonably withheld if the assignee demonstrates the financial ability to perform in the reasonable judgment of the City Council. Each assignment shall be in writing executed by Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title or interests being assigned. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment unless the City approves the release in writing. Developer shall maintain written records of all assignments made by Developer to Assignee, including a copy of each executed assignment and the Assignee's notice information as required by this Agreement, and, upon written request from the City, any Party or Assignee, shall provide a copy of such records to the requesting person or entity, and this obligation shall survive the assigning Party's sale, assignment, transfer or other conveyance of any interest in this Agreement or the Property. The City shall not be required to execute any consent with respect to assignment to an Affiliate nor shall the City be required to make any representations with respect to any assignment. The City shall be notified of any assignment of this agreement sixty (60) days in advance of the effective date of any such assignment.

(b) Developer may assign any receivables or revenues due pursuant to this Agreement or any Reimbursement Agreement to a third party without the consent of, but upon written notice to the City. Provided, however, that notwithstanding the above, the City shall not be required to make partial payments to more than two parties as a result of an assignment and shall not execute any consent or make any representations with respect thereto.

(c) The Developer and assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of (a) their respective lenders without the consent of, but with prompt written notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including notice information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement within thirty (30) days written notice to the lender. A lender is not a party to this Agreement unless this

Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial. Any purchaser from or successor owner through a lender of any portion of the Property, except an en-user homeowner, shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured. The City shall not be required to make partial payments to more than two parties as a result of an assignment and shall not execute any consent or make any representations with respect thereto.

(d) The City shall not be required to acknowledge the receipt of any Assignment by the Developer; however, to the extent the City does acknowledge receipt of any assignment pursuant to this Section, such acknowledgment does not evidence the City's agreement, acceptance or acknowledgment of the content of the assignment documents or any rights accruing thereunder; it is solely an acknowledgment of receipt of the notice via mail, express mail or email.

(e) The City does not and shall not consent to nor participate in any third-party financing based upon the Developer's assignment of its right to receive funds pursuant to this Agreement or any Reimbursement Agreement.

Section 15.04. 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 15.05. Entire Agreement; Amendment.

This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement. This Agreement may only be amended by a written agreement executed by all Parties.

Section 15.06. 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 15.07. Counterparts.

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

Section 15.08. Severability; Waiver.

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

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

Section 15.09. No Third-Party Beneficiaries.

The City and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third party beneficiary, or any individual or entity other than the City, the Developer or assignees of such Parties.

Section 15.10. Notice of Assignment. Developer shall not transfer any portion of the Property prior to the levy of Assessments, except as provided in Section 3.05. Subject to Section 15.03 herein, the requirements set forth below shall apply in the event that the Developer sells, assigns, transfers or otherwise conveys the Property or any part thereof and/or any of its rights, benefits or obligations under this Agreement. Developer must provide the following:

- (a) within 30 days after the effective date of any such sale, assignment, transfer, or other conveyance, the Developer must provide written notice of same to the City;
- (b) the Notice must describe the extent to which any rights or benefits under this Agreement have been sold, assigned, transferred, or otherwise conveyed;
- (c) the Notice must state the name, mailing address, and telephone contact information of the person(s) acquiring any rights or benefits as a result of any such sale, assignment, transfer, or other conveyance;
- (d) the Notice must be signed by a duly authorized person representing the Developer and a duly authorized representative of the person that will acquire any rights or benefits as a result of the sale, assignment transfer or other conveyance.

Section 15.11. No Joint Venture.

Nothing contained in this Agreement or any other agreement between the Developer and the City is intended by the Parties to create a partnership or joint venture between the Developer, on the one hand, and the City on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or

obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

Section 15.12. Estoppel Certificates. From time to time within fifteen (15) business days of a written request of the Developer or any future Developer, and upon the payment of a \$100.00 fee to the City, the City Manager, or his/her designee is authorized, in his official capacity and to his reasonable knowledge and belief, to execute a written estoppel certificate in form approved by the City Attorney, identifying any obligations of a Developer under this Agreement that are in default. No other representations in the Estoppel shall be made by the City.

Section 15.13. Independence of Action.

It is understood and agreed by and among the Parties that in the design, construction and development of the Public Improvements and any of the related improvements described herein, and in the Parties' satisfaction of the terms and conditions of this Agreement, that each Party is acting independently, and the City assumes no responsibility or liability to any third parties in connection to the Developer's obligations hereunder.

Section 15.14. Limited Recourse.

No officer, director, employee, agent, attorney or representative of the Developer shall be deemed to be a Party to this Agreement or shall be liable for any of the contractual obligations created hereunder. No elected official of the City and no agent, attorney or representative of the City shall be deemed to be a Party to this Agreement or shall be liable for any of the contractual obligations created hereunder.

Section 15.15. Exhibits.

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 15.16. No Consent to Third Party Financing.

The City does not and shall not consent to nor participate in any way in any third-party financing based upon the Developer's assignment of its right to receive funds pursuant to this Agreement or any Reimbursement Agreement.

Section 15.17. Survival of Covenants.

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

Section 15.18. No Acceleration.

All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

Section 15.19. Conditions Precedent.

This Agreement is expressly subject to, and the obligations of the Parties are conditioned upon the City levy of the Assessments or approval of a Reimbursement Agreement.

Section 15.20. No Reduction of Assessments.

Following the issuance of each series of PID Bonds, the Developer agrees not to take any action or actions to reduce the total amount of the Assessments levied in payment of such PID Bonds.

Section 15.21. Recording Fees.

Any fees associated with the recording of documents in the real property records of Harris County in order to give initial notice of the Assessments or made pursuant to the Act, shall be paid by the Developer. Ongoing recording in the real property records of Harris County of updates to the Service and Assessment Plan shall be paid as an administrative expense of the PID.

Section 15.22. Anti-Boycott Verification.

The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 15.23. Iran, Sudan and Foreign Terrorist Organizations

The Developer 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.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Developer 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. The Developer understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 15.24. Governing Law.

The Agreement shall be governed by the laws of the State of Texas without regard to any choice of law rules; and venue for any action concerning this Agreement and the Reimbursement Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 15.25. Petroleum.

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. The Developer understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit.

Section 15.26. Firearms.

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, ‘discriminate against a firearm entity or firearm trade association’ (A) means, with respect to the 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. As used in the foregoing verification, (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), and (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 Developer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit.

Section 15.27. Conflict.

In the event of any conflict between this Agreement and any Indenture authorizing the PID Bond, the Indenture controls. In the event of any conflict between this Agreement and the Reimbursement Agreement, the Reimbursement Agreement shall control, except that in all cases, Applicable Law shall control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF TOMBALL

By: _____

Name: _____

Title: City Manager

ATTEST:

City Secretary

[SIGNATURES CONTINUE ON NEXT PAGE]

HMH TOMBALL TOWNHOMES, LLC.

By: _____

Name: Michael J Pizzitola

Title: Vice President

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared **Michael J. Pizzitola**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me that he/she is the Vice-President and duly authorized representative of HMH Tomball Townhomes, LLC a Texas limited liability company, and that he/she executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2022.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A

PROPERTY DESCRIPTION

Being a 19.34 acre (842,341 square foot) tract of land situated in the C. Pillot survey, Abstract No. 632 City of Tomball of Harris County, Texas and being the remainder of a called 5.0000 acre tract of land as described in an instrument to Franklin L. Cox and wife Karen M. Cox recorded under Harris County Clerk's File Number (H.C.C.F. No.) N337110, all of a called 2.0000 acre tract of land as described in an instrument to Franklin L. Cox and wife Karen M. Cox recorded under H.C.C.F. No. N325685 and the remainder of a called 22.1454 acre tract as described in an instrument to Franklin L. Cox and wife Karen M. Cox recorded under H.C.C.F. No. M269425, said 19.34 acre tract of land described by metes and bounds as follows, with all bearings based on the Texas coordinate system of 1983 (NAD83), South Central Zone 4204 and referenced to monuments found along the north right-of-Way line of Holderrieth Road as cited herein and as shown on a survey plat of even date prepared by the undersigned in conjunction with this metes and bounds description:

BEGINNING at a 5/8-Inch iron rod with cap stamped "GORRONDONA & ASSOC." found for the southwest corner of the herein described tract, lying on the north right-of-way line of Holderrieth Road (80 feet wide), said point being the northwest corner of a called 0.3104 acre tract (Parcel 23) as described in an instrument to Harris County recorded under H.C.C.F. No. RP-2021-276721 for the widening of said Holderrieth Road, same being the northeast corner of a called 0.2073 acre tract (Parcel 21B) as described in an instrument to Harris County recorded under H.C.C.F. No. RP-2021-358152, from which a 5/8-inch iron rod with cap stamped "EE COON" bears S 21°13' E, 20.75 feet, found for the southwest corner of said 22.1454 acre tract and the southeast corner of a called 21.361 acre tract as described in an instrument to Frank Leon Denina and wife Alma Ruth Denina recorded under H.C.C.F. No. E712621, Thence, N 21°13'03" W, along and with the common line of said 21.361 acre tract and said 22.1454 acre tract, at a distance of 1,216.08 feet passing a 2-Inch iron pipe found for the southwest corner of said 2.0000 acre tract and continuing for a total distance of 1,442.32 feet to a 1/2-Inch iron rod inside a 5-Inch metal pipe found for the northwest corner of the herein described tract and the southwest corner of a called 2.5 acre tract as described in an instrument to Gurprit Singh and Jaspreet Bains recorded under H.C.C.F. No. RP-2018-252717;

THENCE, N 69°48'38" E, along and with the southerly line of said 2.5 acre tract, a distance of 476.61 feet to a 1/2-Inch iron pipe with cap stamped "BGE INC" set for the northeast corner of the herein described tract and the southeast corner of said 2.5 acre tract, lying on the east line of said 22.1454 acre tract, same being the west line of a called 12.73942 acre tract as describe in an instrument to C & C Properties, Inc. recorded under H.C.C.F. No. L894620;

THENCE, S 28°04'44" E, along and with the common line of said 22.1454 acre tract and said 12.73942 acre tract, a distance of 1,547.71 feet to a 1/2-Inch iron pipe with cap stamped "BGE INC" set for the southeast corner of the herein described tract and the northeast corner of said 0.3104 acre tract (Parcel 23), lying on the north right-of-way line of said Holderrieth Road, from which a 5/8-Inch iron rod with cap stamped "EE COON" bears S 25°56' E, 20.9 feet, found for the common south corner of said 22.1454 acre tract and said 12.73942 acre tract;

THENCE, S 77°37'17" W, along and with the north right-of-way line of said Holderrieth Road, same being the north line of said 0.3104 acre tract (Parcel 23), a distance of 669.39 feet to the POINT OF BEGINNING and containing 19.34 acres (842,341 square feet) of land, more or less.

006394.000008\4865-0975-1837.v1



EXHIBIT B
PLANNED DEVELOPMENT ORDINANCE

ORDINANCE NO. 2021-17

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 50 (ZONING) OF THE TOMBALL CODE OF ORDINANCES BY CHANGING THE ZONING DISTRICT CLASSIFICATION OF APPROXIMATELY 19.65 ACRES OF LAND LEGALLY DESCRIBED AS TRACTS 14H, 14H-1, 14H-1A, 14H-1B, 14H-2 & 14H-3 (AG-USE) AND TRACT 14H-4 ABSTRACT 632 C N PILLOT, FROM THE SINGLE-FAMILY 20 ESTATE DISTRICT TO THE PLANNED DEVELOPMENT (PD-17) DISTRICT, SAID PROPERTY BEING GENERALLY LOCATED ON THE NORTH SIDE OF HOLDERRIETH ROAD AT 11922 HOLDERRIETH ROAD, WITHIN THE CITY OF TOMBALL, HARRIS COUNTY, TEXAS; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP OF THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF, MAKING FINDINGS OF FACT; AND PROVIDING FOR OTHER RELATED MATTERS.

* * * * *

Whereas, HistoryMaker Homes has requested that approximately 19.65 acres of land legally described as Tracts 14H, 14H-1, 14H-1A, 14H-1B, 14H-2 & 14H-3 (AG-USE) and Tract 14H-4 Abstract 632 C N Pilot, generally located north side of Holderrieth Road at 11922 Holderrieth Road, within the City of Tomball, Harris County, Texas, (the "Property"), be rezoned; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

Whereas, the public hearing was held before the Planning & Zoning Commission at least forty (40) calendar days after the City's receipt of the requested rezoning; and

Whereas, the Planning & Zoning Commission recommended in its final report that City Council approve the requested rezoning of the Planned Development (PD-17) District; and

Whereas, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

Whereas, the City Council deems it appropriate to grant the requested rezoning.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, THAT:

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. The zoning classification of the Property is hereby changed from the Single-Family 20 Estate District to the Planned Development (PD-17) District subject to the regulations, restrictions, and conditions hereafter set forth.

Section 3. The Official Zoning Map of the City of Tomball, Texas shall be revised and amended to show the designation of the Property as Planned Development (PD-17) District, with the appropriate reference thereon to the number and effective date of this Ordinance and a brief description of the nature of the change.

Section 4. This Ordinance shall in no manner amend, change, supplement, or revise any provision of any ordinance of the City of Tomball, save and except the change in zoning classification for the Property to the Planned Development (PD-17) District as described above.

Section 5. The Planned Development (PD-17) shall be subject to the following limitations, restrictions and covenants:

- A. Compliance with the Application, Regulations and Concept Plan. The granting of the Planned Development (PD-17) District shall be conditioned upon the proposed improvements and lands uses being located, constructed and conducted upon the Property in substantial compliance with the application for the Planned Development District (Exhibit "A"), Planned Development Regulations (Exhibit "B") and concept plan (Exhibit "C") made a part hereof for all purposes.
- B. The proposed walking path adjacent to the retention pond shall include lighting for the safety of the pedestrians;
- C. The perimeter of the development shall be screened with a fence.

Section 6. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 7. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

FIRST READING:

READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST DAY OF JUNE 2021.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:

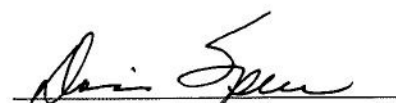
READ, PASSED, AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 6TH DAY OF JULY 2021.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>



Gretchen Fagan, Mayor

ATTEST:



Doris Speer, City Secretary

Exhibit "A"
Application for Planned Development



RECEIVED (KC)
05/20/2021 3:06:46 PM

Revised 5/19/15
P&Z #P21-257

**APPLICATION FOR
PLANNED DEVELOPMENT**
Community Development Department
Planning Division

The PD, Planned Development, district is a district which accommodates planned associations of uses developed as integral land use units such as office parks, retail/commercial or service centers, shopping centers, residential developments having a mixture of housing options (e.g., single-family, multi-family, Duplex (Two Family), etc.), or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or a combination of owners. A Planned Development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts.

No planned development shall be established and no building permit shall be issued for any use designated as a Planned Development within any zoning district until a Planned Development is approved and issued in accordance with the provisions of the Zoning Ordinance and Concept Plan.

The minimum acreage for a planned development request shall be four (4) acres.

APPLICATION SUBMITTAL: Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant

Name: BGE, Inc. (Contact: Andrew Lang) Title: Planner
Mailing Address: 10777 Westheimer Road, Ste. #400 City: Houston State: TX
Zip: 77042
Phone: (281) 558-8700 Fax: (281) 558-9701 Email: alang@bgeinc.com

Owner

Name: Karen M. Cox Title: _____
Mailing Address: 11922 Holderrieth Road City: Tomball State: TX
Zip: 77375
Phone: (281) 451-6080 Fax: () Email: kmc821@yahoo.com

Engineer/Surveyor (if applicable)

Name: BGE, Inc. (Contact: Bill Kollan) Title: Director
Mailing Address: 1450 Lake Robbins Drive, Ste. #310 City: The Woodlands State: TX
Zip: 77380
Phone: (281) 210-5570 Fax: (281) 210-0141 Email: bkollan@bgeinc.com

Description of Proposed Project: Townhome Development - Fee Simple for Sale

Physical Location of Property: 1/2 Mile west of intersection of Holderrieth Road and Huffsmith-Kohville Road

[General Location - approximate distance to nearest existing street corner]

City of Tomball, Texas 501 James Street, Tomball, Texas 77375 Phone: 281-290-1405 www.tomballtx.gov

Legal Description of Property: TRS-14H, 14H1, 14H-1A, 14H-1B, 14H-2, 14H-3, & 14H-4 Abst. 632 CN Pilot
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]


HCAD Identification Number: 0440580000104 & 0440580000266 Acreage: 19.65 Ac.

Current Use of Property: Rural Residential

Proposed Use of Property: Townhome Development - SFR Fee Simple for Sale

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

This is to certify that the information on this form is **COMPLETE, TRUE, and CORRECT** and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

X  5/18/2021
Signature of Applicant Date

X  5/18/2021
Signature of Owner Date

EXHIBIT A

EXHIBIT "A"

BEING 19.6454 acres out of the West 22.1454 acres of land in the G. N. Pillot Survey, Abstract 632, Harris County, Texas and being out of that certain 34.7173 acre tract of land described in deed dated August 9, 1979 and recorded under Harris County Clerk's File No. G196478, Official Public Records of Real Property, Harris County, Texas; said 19.6454 acres being more particularly described as follows:

COMMENCING at a point marking Southeast corner of said 34.7173 acre tract at the intersection of the North line of Holderrieth Road (60 feet wide) the West line of the Burlington Rock Island Railroad (100 feet wide);

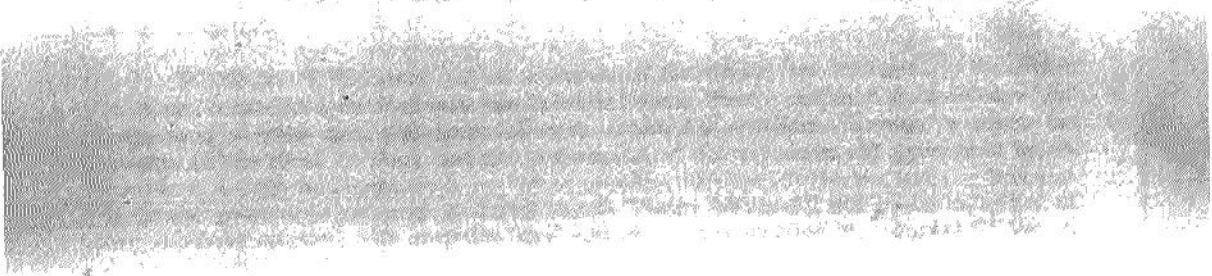
THENCE South 80° 02' 34" West, 311.39 feet along the North line of said Holderrieth Road to a 5/8 inch iron rod found marking Southeast corner of said 22.1454 acre tract and the PLACE OF BEGINNING for herein described tract;

THENCE South 80° 02' 34" West, 671.45 feet in the North line of said Holderrieth Road to a 1/2 inch iron rod with a 3/4 inch iron pipe found marking the Southwest corner of said 22.1454 acres, and a 30 feet wide road easement;

THENCE North 18° 38' 19" West, 1463.65 feet along the center line of said road easement to a 1/2 inch iron rod set for the Northwest corner for herein described tract;

THENCE North 72° 23' 22" East, with the South line of a 2.5000 acre tract, part of said 22.1454 acre tract, 476.54 feet to a 1/2 inch iron rod set for corner;

THENCE South 25° 30' 00" East, with the Northeast line of said 22.1454 acre tract, 1567.68 feet to the PLACE OF BEGINNING containing 19.6454 acres of land.



HOLDERRIETH ROAD

PARCEL No. 23
METES AND BOUNDS DESCRIPTION
13,519 SQUARE FEET
(0.3104 ACRES)
C.N. PILOT SURVEY, ABSTRACT No. 632
HARRIS COUNTY, TEXAS
Page 1 of 2

Being a 0.3104 acre tract of land situated in the C.N. Pilot Survey, Abstract No. 632, Harris County, Texas, said 0.3104 acre tract of land being a portion of a 22.1454 acre tract of land (by deed) deeded to Franklin L. Cox, Et Ux as recorded in Clerk's File No. M269425 of the Official Public Records of Real Property of Harris County, Texas, said 0.3104 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING (N=13,952,357.860, E=3,044,040.175) at a 5/8 inch iron rod with cap stamped "E.E. Coon" found for the southwest corner of said 22.1454 acre tract of land, said 5/8 inch iron rod with cap stamped "E.E. Coon" being the southeast corner of a 21.361 acre tract of land (by deed) deeded to Frank Leon Denina, Et Ux as recorded in Clerk's File No. E712621 of said Official Public Records of Real Property of Harris County, Texas, said 5/8 inch iron rod with cap stamped "E.E. Coon" also being in the existing northerly right-of-way line of Holderrieth Road (a variable width right-of-way);

THENCE, North 21 degrees 06 minutes 31 seconds West, with the westerly line of said 22.1454 acre tract of land and with the easterly line of said 21.361 acre tract of land, a distance of 20.64 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for corner in the proposed northerly right-of-way line of said Holderrieth Road;

THENCE, North 77 degrees 37 minutes 37 seconds East, with the proposed northerly right-of-way line of said Holderrieth Road, a distance of 668.55 feet to a 5/8 inch iron rod with cap stamped "GORRONDONA" set for corner in the easterly line of said 22.1454 acre tract of land;

THENCE, South 27 degrees 58 minutes 12 seconds East, with the easterly line of said 22.1454 acre tract of land, a distance of 20.73 feet to a 5/8 inch iron rod with cap stamped "E.E. Coon" found for the southeast corner of said 22.1454 acre tract of land, said 5/8 inch iron rod with cap stamped "E.E. Coon" being in the southerly line of a 34.7173 acre tract of land (by deed) deeded to Trumix Concrete Company as recorded in Clerk's File No. G196478 of the Official Public Records of Real Property of Harris County, Texas, said 5/8 inch iron rod with cap stamped "E.E. Coon" also being in the existing northerly right-of-way line of said Holderrieth Road, from which a 3/4 inch iron rod found for reference bears North 40 degrees 13 minutes 46 seconds West, a distance of 0.56 feet;

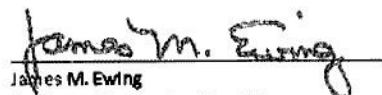
Parcel No. 23

Page 2 of 2

THENCE, South 77 degrees 35 minutes 25 seconds West, with the southerly line of said 24.1454 acre tract of land and with the existing northerly right-of-way line of said Holderrieth Road, a distance of 670.99 feet to the **POINT OF BEGINNING** and containing 13,519 square feet or 0.3104 acres of land, more or less.

Notes:

- (1) This legal description is issued in conjunction with and based on the route survey by Gorrondona & Associates, Inc. Last certified December 14, 2018. Reference is hereby made to that survey as Part 1 of 2.
- (2) ROW markers along proposed line are a 5/8 inch iron rod set with cap stamped "GORRONDONA" unless otherwise noted.
- (3) All bearings are referenced to the Texas Coordinate System, NAD-83, The South Central Zone 4204, all coordinates, distances and areas shown are surface values utilizing a surface scale factor of 1.000058726.


James M. Ewing
Registered Professional Land Surveyor
Texas Registration No. 4892
Texas Firm No. 10106902

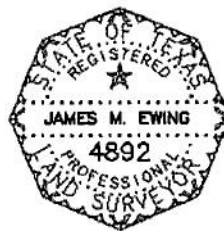


EXHIBIT C



May 18, 2021

City of Tomball
Community Development Department – Planning Division
501 James Street
Tomball, Texas 77375

Re: Application for rezoning of +/- 19.33 acres located at 11922 Holderrieth Rd.

To whom it may concern,

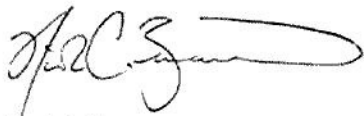
HistoryMaker Homes is currently under contract to purchase +/- 19.33 acres at 11922 Holderrieth Rd., which is located near the northwest corner of the intersection of Holderrieth Rd. and the Burlington – Rock Island rail line, approximately 1.4 miles east of SH 249.

This property sits between new and existing Single-Family communities to the west and the railroad and new Business and Technology Park immediately to the east. As such, we believe that a higher density residential product is an ideal fit for this transitional location – a natural link between detached Single-Family and Light Industrial land uses.

HistoryMaker desires to introduce our attached, alley-served townhome product, which would require Planned Development Zoning. This is a for-sale product that comes in 3-pack, 4-pack, 5-pack and 6-pack building configurations, which will be thoughtfully placed within the site to promote a diverse and appealing street scene. This alley-served product provides an aesthetic advantage over traditional density product – so often overburdened by the garage on a front-loaded elevation.

Please review the attached materials for more information. Thank you for your consideration.

Sincerely,



Nicole C. Zimmermann
Director, Land Acquisition & Development
HistoryMaker Homes

Exhibit "B"
Planned Development Regulations

COX TRACT
PLANNED DEVELOPMENT DISTRICT

May 19, 2021

A. Introduction

1. Description of the Property

The subject property consists of 19.65 acres and is located in south Tomball at the southernmost portion of the city limits, along the north side of Holderrieth Road. The legal description of the property is shown on **Exhibit "A"**.

2. Description of Proposed Development

The proposed development will consist of single-family residential attached townhomes to be sold as fee simple lots and will include a mix of three-unit, four-unit, five-unit, and six-unit townhomes. All homes will have public street frontage with vehicular access provided by private alleys. This will allow for an enhanced streetscape and pedestrian environment. In addition, all yards and common areas will be maintained by the Homeowner's Association (HOA) which will ensure that the high-quality appearance of the community will be preserved. **Exhibit "B"** illustrates the proposed conceptual plan for the tract.

3. Description of the Area

The site is located west of the intersection of Huffsmith-Kohrville Road and Holderrieth Road, in an area that is beginning to experience significant development with the Tomball Business and Technology Park and Alexander Estates single family residential community currently under construction. The properties immediately to the north and east of the tract are currently undeveloped. The property to the west is currently being used for single family residential purposes.

4. Purpose

The purpose of the Planned Development is to allow for new or innovative concepts in land utilization not permitted in other zoning districts. In this case, the proposed district will allow for the development of a unique single-family residential housing option for the community.

5. Comprehensive Plan

The proposed PD is consistent with the goals established by the Comprehensive plan by providing a high-quality development that:

- Provides a wider range of residential options to meet the "life-cycle" housing needs of current and future Tomball residents.
- Provides quality design and long-term sustainability of newer residential areas.

- Provides a continued emphasis on Tomball's housing quality and options as a fundamental economic development advantage and benefit for current and prospective residents.

6. Applicability

To be eligible for a PD, a property must be at least four (4) acres in size. The subject tract consists of 19.65 acres.

B. Zoning and Land Use

1. Existing Zoning

The property is currently zoned as "Single Family 20 Estate District" (SF-20-E).

The City's Future Land Use Plan identifies the site as "Corridor Commercial".

The property is entirely within the Tomball Independent School District.

2. Permitted Use(s)

Single Family Attached Townhomes.

C. Design Standards

1. Height Regulations

Maximum Height: Main Buildings – Three (3) stories, not to exceed forty-five (45) feet.

Maximum Height: Accessory Buildings – One (1) story, not to exceed fifteen (15) feet.

2. Area Regulations

Minimum lot area: 1,800 square feet

Minimum lot width: Twenty (20) feet

Minimum lot depth: Eighty (80) feet

3. Size of Yard Regulations

Minimum Front Yard: Ten (10) Feet

Minimum Side Yard: Zero (0) feet for internal (attached) units. Five (5) feet for corner units.

Minimum Rear Yard: Fifteen (15) feet. The minimum rear yard where lots back on a designated arterial street shall not be less than twenty-five (25) feet. However, lots backing up to a twenty (20) foot alley shall have a ten (10) foot minimum rear yard.

4. Landscape Buffers

There shall be a minimum 25-foot-wide landscape buffer along Holderrieth Road.

5. Landscaping Requirements

Per section 50-113 of the Tomball Code of Ordinances.

6. Parking Requirements

Per section 50-112 of the Tomball Code of Ordinances.

7. Screening, Buffering, and Fencing Requirements

Per section 50-115 of the Tomball Code of Ordinances.

8. Building Requirements

Minimum Building Separation –Ten (10) feet for buildings with or without openings

9. Lot Requirements

Maximum lot coverage within the district shall be seventy-five (75) percent combined for main buildings and accessory buildings.

Minimum floor area per dwelling unit for the district shall be one-thousand four-hundred (1,400) square feet of heated and/or air-conditioned floor area per unit.

10. Additional Requirements

Maximum Dwelling Units per Acre: 20

Public Rights-Of-Way serving single-family residential uses within the district shall be permitted to be a minimum of fifty (50) feet wide.

Private Alleys providing vehicular access to single-family residential uses within the district shall be permitted and shall be a minimum of twenty (20) feet wide.

Building length: Buildings shall not exceed one hundred fifty (150) feet in length

D. Exhibits

- a. Metes and Bounds Description
- b. Conceptual Plan
- c. Letter of Intent
- d. Product Renderings

Exhibit “C”

Concept Plan

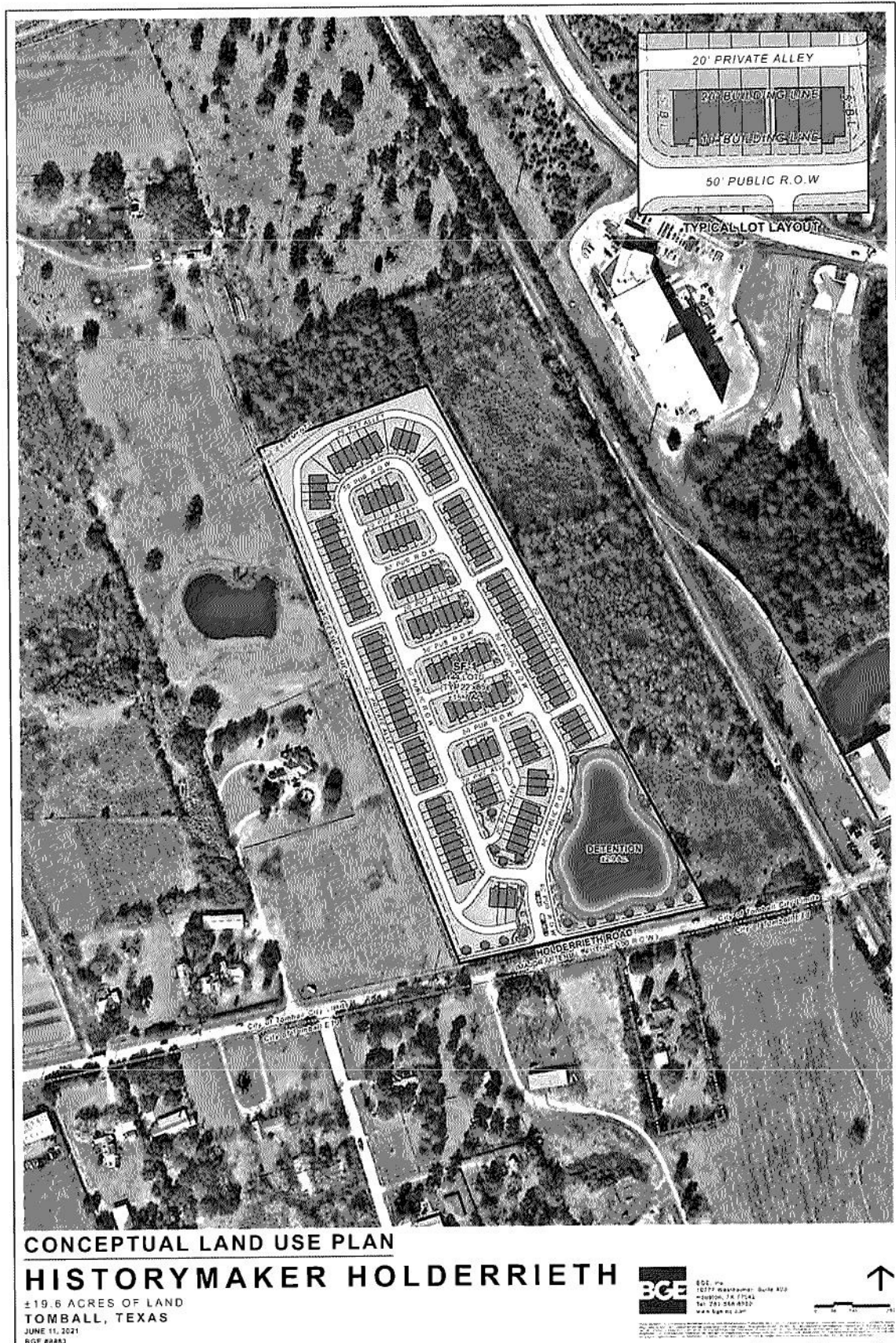


Exhibit B

EXHIBIT C

PUBLIC IMPROVEMENTS AND PROJECT COSTS

The Projects listed and their costs are estimates and final projects and costs of the Public Improvements shall be as set forth in the applicable Service and Assessment Plan. The Service and Assessment Plan will also include costs of issuance for the PID Bonds.

Accounts	Public Improvements eligible for PID reimbursement
Engineering Design	\$ 428,599
Geotechnical Services	\$ 122,645
Erosion Control	\$ 52,249
Sanitary Sewer	\$ 2,917,263
Paving	\$ 1,102,345
OS Paving	\$ 33,639
Landscape	\$ 722,480
TOTAL	\$ 5,379,220

EXHIBIT D

RESERVED

Exhibit D

EXHIBIT E

LANDOWNER CONSENT

CONSENT AND AGREEMENT OF LANDOWNERS

This Consent and Agreement of Landowner is issued by _____, an _____, as the landowner (the “Landowner”) who collectively hold record title to all property located within the [_____ Public Improvement District] (the “PID”) created by the City of _____ pursuant to a petition of Landowner. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the City’s ordinance levying assessments on property within the PID, dated _____, 202_, including the Service and Assessment Plan and Assessment Rolls attached thereto (the “Assessment Ordinance”). [TO BE EXECUTED PRIOR TO THE LEVY OF ASSESSMENTS FOR EACH SERIES OF BONDS WITH EACH PHASE]

Landowner hereby declare and confirm that they collectively hold record title to all property in the PID which are subject to the Assessment Ordinances, as set forth on Exhibit A. Further, Landowner hereby ratify, declare, consent to, affirm, agree to and confirm each of the following:

1. The creation and boundaries of the PID, the boundaries of each Assessed Property, and the Authorized Improvements for which the Assessments are being made, as set forth in the Service and Assessment Plan.
2. The determinations and findings as to benefits by the City in the Assessment Ordinance and the Service and Assessment Plan.
3. The Assessment Ordinance and the Service and Assessment Plan and Assessment Roll.
4. The right, power and authority of the City Council to adopt the Assessment Ordinances and the Service and Assessment Plans and Assessment Roll;
5. Each Assessment levied on each Assessed Property as shown in the Service and Assessment Plan (including interest and Administrative Expenses as identified in the Service and Assessment Plan and as updated from time to time as set forth in the Service and Assessment Plan).
6. The Authorized Improvements specially benefit the Assessed Property in an amount in excess of the Assessment levied on each Assessed Property, as such Assessments are shown on the Assessment Roll.
7. Each Assessment is final, conclusive and binding upon such Landowners, regardless of whether such Landowners may be required to pay Assessments under certain circumstances pursuant to the Service and Assessment Plan.

8. The then-current owner of each Assessed Property shall pay the Assessment levied on the Assessed Property owned by it when due and in the amount required by and stated in the Service and Assessment Plan and the Assessment Ordinance.
9. Delinquent installments of the Assessment shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act.
10. The "Annual Installments" of the Assessments may be adjusted, decreased and extended in accordance with the Service and Assessment Plan, and the then-current owner of each Assessed Property shall be obligated to pay its revised amounts of the Annual Installments, when due, and without the necessity of further action, assessments or reassessments by the City.
11. All notices required to be provided to it under the PID Act have been received and to the extent of any defect in such notice, Landowners hereby waive any notice requirements and consents to all actions taken by the City with respect to the creation of the PID and the levy of the Assessments.
12. That the resolution creating the PID, the Ordinance levying the Assessments, the Service and Assessment Plan and a Notice of Creation of Special Assessment District and Imposition of Special Assessment to be provided by the City, shall be filed in the records of the County Clerk of Harris County, with copies of the recorded documents delivered to the City promptly after receipt thereof by the recording party, as a lien and encumbrance against the Assessed Property.
13. Each Assessed Property owned by the Landowner identified in the Service and Assessment Plan and Assessment Roll are wholly within the boundaries of the PID.
14. There are no Parcels owned by the Landowners within the boundaries of the PID that are not identified in the Service and Assessment Plan and the Assessment Roll.
15. Each Parcel owned by the Landowners identified in the Service and Assessment Plan and Assessment Roll against which no Assessment has been levied was Non-Benefited Property as of _____, 20__.

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

[Execution page follows]

IN WITNESS WHEREOF, the undersigned has caused this Agreement and Consent of Landowner to be executed as of _____, 202__.

an _____

By:

By:

By: _____
Name: _____
Its _____

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____, 20____ by _____, as, _____ of CHTA Development, Inc. a Texas corporation on behalf of said company.

Notary Public, State of Texas

EXHIBIT F

FORM OF PAYMENT CERTIFICATE

PAYMENT CERTIFICATE NO. _____

Reference is made to that certain Indenture of Trust by and between the City and the Trustee dated as of _____ (the “Indenture”) relating to the “City of _____, Texas, Special Assessment Revenue Bonds, Series 20__ (_____ Public Improvement District Project)” (the “Bonds”). Unless otherwise defined, any capitalized terms used herein shall have the meanings ascribed to them in the _____, LLC an Arizona limited liability company (the “Developer”) and requests payment to the Developer (or to the person designated by the Developer) from:

_____ the Public Improvement Account of the Project Fund

from _____, N.A., (the “Trustee”), in the amount of _____ (\$ _____) for labor, materials, fees, and/or other general costs related to the creation, acquisition, or construction of certain Public Improvements providing a special benefit to property within the _____ Public Improvement District.

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

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Certificate for Payment Form on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The itemized payment requested for the below referenced Public Improvements has not been the subject of any prior payment request submitted for the same work to the City or, if previously requested, no disbursement was made with respect thereto.
3. The itemized amounts listed for the Public Improvements below is a true and accurate representation of the Public Improvements associated with the creation, acquisition, or construction of said Public Improvements and such costs (i) are in compliance with the Development Agreement, and (ii) are consistent with and within the cost identified for such Public Improvements as set forth in the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.
5. The Developer has timely paid all ad valorem taxes and Annual Installments of Public Assessments it owes or an entity the Developer controls owes, located in the _____ Public Improvement District and has no outstanding delinquencies for such Public Assessments.

6. All conditions set forth in the Indenture and the Development Agreement for the payment hereby requested have been satisfied.

7. The work with respect to Public Improvements referenced below (or its completed segment) has been completed, and the City has inspected such Public Improvements (or its completed segment).

8. The Developer 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.

Payments requested are as follows:

Payee / Description of Public Improvement	Total Cost Public Improvement	Budgeted Cost of Public Improvement	Amount requested be paid from the Public Improvement Account

Attached hereto are receipts, purchase orders, change orders, and similar instruments which support and validate the above requested payments. Also attached hereto are "bills paid" affidavits and supporting documentation in the standard form for City construction projects.

Pursuant to the Development Agreement, after receiving this payment request, the City has inspected the Public Improvements (or completed segment) and confirmed that said work has been completed in accordance with approved plans and all applicable governmental laws, rules, and regulations.

Payments requested hereunder shall be made as directed below:

- a. X amount to Person or Account Y for Z goods or services.
- b. Payment instructions

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

_____,
LLC, an _____ limited liability company

By: _____

Name: _____

Title: _____

APPROVAL OF REQUEST

The City is in receipt of the attached Certificate for Payment, acknowledges the Certificate for Payment, and finds the Certificate for Payment to be in order. After reviewing the Certificate for Payment, the City approves the Certificate for Payment and authorizes and directs payment of the amounts set forth below by Trustee from the Project Fund to the Developer or other person designated by the Developer as listed and directed on such Certificate for Payment. The City's approval of the Certificate for Payment shall not have the effect of estopping or preventing the City from asserting claims under the Development Agreement, the Reimbursement Agreement, the Indenture, the Service and Assessment Plan, or any other agreement between the parties or that there is a defect in the Public Improvements.

Amount of Payment Certificate Request	Amount to be Paid by Trustee from Improvement Account
\$ _____	\$ _____

CITY OF TOMBALL, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G

FORM OF CLOSING DISBURSEMENT REQUEST

The undersigned is an agent for _____, LP, (the “Developer”) and requests payment from:

[the Cost of Issuance Account of the Project Fund][the Improvement Account of the Project Fund] from _____, (the “Trustee”) in the amount of _____ DOLLARS (\$ _____) for costs incurred in the establishment, administration, and operation of the _____ Public Improvement District (the “District”), as follows:

Closing Costs Description	Cost	PID Allocated Cost
TOTAL		

In connection to the above referenced payments, the Developer represents and warrants to the City as follows:

1. The undersigned is a duly authorized officer of the Developer, is qualified to execute this Closing Disbursement Request on behalf of the Developer, and is knowledgeable as to the matters set forth herein.
2. The payment requested for the above referenced establishment, administration, and operation of the District at the time of the delivery of the Bonds has not been the subject of any prior payment request submitted to the City.
3. The amount listed for the below itemized costs is a true and accurate representation of the Actual Costs incurred by Developer with the establishment of the District at the time of the delivery of the Bonds, and such costs are in compliance with and within the costs as set forth in the Service and Assessment Plan.
4. The Developer is in compliance with the terms and provisions of the Development Agreement, the Indenture, and the Service and Assessment Plan.
5. All conditions set forth in the Indenture for the payment hereby requested have been satisfied.
6. The Developer 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.

Payments requested hereunder shall be made as directed below:

- c. X amount to Person or Account Y for Z goods or services.
- d. Payment instructions

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

_____, LLC, an _____ limited liability company

By: _____

Name: _____

Title: _____

Date: _____

APPROVAL OF REQUEST

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 to the extent set forth below and authorizes and directs payment by Trustee in such amounts and from the accounts listed below, to the Developer or other person designated by the Developer herein.

Closing Costs	Amount to be Paid by Trustee from Cost of Issuance Account
\$ _____	\$ _____

CITY OF TOMBALL, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT H

HOME BUYER DISCLOSURE PROGRAM

The Developer of _____ Public Improvement district (the “PID”) shall record notice of the PID in the appropriate land records for the Property. The Developer shall require in its contracts with builders within the PID that the builders provide notice to prospective homebuyers in accordance with the following minimum requirements:

2. 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 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.
6. If the homebuilders estimate monthly ownership costs, they must include special assessments in estimated property taxes.
7. Notify Settlement Companies 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

EXHIBIT I

PID PETITION

PETITION FOR THE CREATION OF A PUBLIC IMPROVEMENT DISTRICT WITHIN THE CITY OF TOMBALL, TEXAS

COMES NOW, HMH Tomball Townhomes, LLC, a Texas limited liability company (“Petitioner”), the owner of a parcel or parcels of taxable real property, who hereby petition the City of Tomball, Texas (“City”), to conduct a hearing on this Petition, and to create a Public Improvement District pursuant to Chapter 372 of the Texas Local Government Code, as amended, to be known as “Seven Oaks Public Improvement District” (the “District”). In support of the same, Owner would respectfully show the following:

I.

The boundaries of the proposed District are set forth in Exhibit “A” attached hereto and incorporated by reference herein. All of such land is located in the corporate limits of the City or its extraterritorial jurisdiction.

II.

The general nature of the proposed improvements (the “Improvements”) are: (i) acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements; (ii) acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way; (iii) landscaping; (iv) the establishment or improvement of parks; (v) erection of fountains, distinctive lighting, and signs; (vi) projects similar to those listed in (i)-(v); (vii) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement; (viii) special supplemental services for improvement and promotion of the District, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement; and (ix) payment of expenses incurred in the establishment, administration, and operation of the District, including the costs of financing the public improvements listed above.

III.

The estimated total cost of the proposed Authorized Improvements together with bond issuance cost, eligible legal and financial fees, eligible credit enhancement costs and eligible cost incurred in the establishment, administration and operation of the District is \$9,000,000, plus the annual costs of supplemental services, if any. The City will pay no cost of the Authorized Improvements or supplemental services from funds other than assessments levied on property within the District.

IV.

The City shall levy assessments on each parcel within the District in a manner that results in imposing equal shares of the costs on property similarly benefited. Each assessment may be paid in part or in full at any time (including interest), and certain assessments may be paid in annual installments (including interest). If the City allows an assessment to be paid in installments, then

the installments must be paid in amounts necessary to meet annual costs for those public Improvements financed by the assessment and must continue for a period necessary to retire the indebtedness on those public Improvements (including interest).

V.

All of the cost of the proposed Improvements shall be apportioned to and paid by assessment of the property within the District. The City will pay none of the costs of the proposed Improvements. Any remaining costs of the proposed Improvements will be paid from sources other than assessment of the property within the District.

VI.

The management of the District will be by the City with the assistance of a third-party administrator hired by the City and paid as part of the annual administrative cost of the District.

VII.

The person or entity signing this Petition request the establishment of the District, is duly authorized, and has the corporate authority to execute and deliver the Petition.

VIII.

The Petitioner proposes that the District be established and managed without the creation of an advisory board.

IX.

Notwithstanding that the total acreage within the proposed District is less than fifty (50) acres, Petitioner is requesting that the City reimburse Petitioner for the cost of the Improvements.

X

The persons or entities (through authorized representatives) signing this Petition are also owners of taxable real property representing more than fifty percent (50%) of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and the record owners of real property liable for assessment under the proposal who: (a) constitute more than fifty percent (50%) of all record owners of property that are liable for assessment under the proposal, and (b) own taxable real property that constitutes more than fifty percent (50%) of the area of all taxable real property that is liable for assessment under the proposal.

XI.

This Petition will be filed with the City Secretary, City of Tomball, Texas.

[EXECUTION PAGE FOLLOWS]

RESPECTFULLY SUBMITTED, on this the 27th day of April, 2022.

PETITIONER:

HMH Tomball Townhomes, LLC, a Texas
limited liability company

By: [Signature]
Name: Michael J. Pizzitelli, Jr.
Title: Vice President

STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was acknowledged before me on April 27th, 2022, by
Michael J. Pizzitelli, Jr., Vice President of HMH Tomball Townhomes, LLC, a
Texas limited liability company, on behalf of said company.



[Signature]
Notary Public, State of Texas

006394.000008\4865-0975-1837.v1

EXHIBIT "A"

Being a 19.34 acre (842,341 square foot) tract of land situated in the C. Pilot survey, Abstract No. 632 City of Tomball of Harris County, Texas and being the remainder of a called 5.0000 acre tract of land as described in an instrument to Franklin L. Cox and wife Karen M. Cox recorded under Harris County Clerk's File Number (H.C.C.F. No.) N337110, all of a called 2.0000 acre tract of land as described in an instrument to Franklin L. Cox and wife Karen M. Cox recorded under H.C.C.F. No. N325685 and the remainder of a called 22.1454 acre tract as described in an instrument to Franklin L. Cox and wife Karen M. Cox recorded under H.C.C.F. No. M269425, said 19.34 acre tract of land described by metes and bounds as follows, with all bearings based on the Texas coordinate system of 1983 (NAD83), South Central Zone 4204 and referenced to monuments found along the north right-of-Way line of Holderrieth Road as cited herein and as shown on a survey plat of even date prepared by the undersigned in conjunction with this metes and bounds description:

BEGINNING at a 5/8-Inch iron rod with cap stamped "GORRONDONA & ASSOC." found for the southwest corner of the herein described tract, lying on the north right-of-way line of Holderrieth Road (80 feet wide), said point being the northwest corner of a called 0.3104 acre tract (Parcel 23) as described in an instrument to Harris County recorded under H.C.C.F. No. RP-2021-276721 for the widening of said Holderrieth Road, same being the northeast corner of a called 0.2073 acre tract (Parcel 21B) as described in an instrument to Harris County recorded under H.C.C.F. No. RP-2021-358152, from which a 5/8-inch iron rod with cap stamped "EE COON" bears S 21°13' E, 20.75 feet, found for the southwest corner of said 22.1454 acre tract and the southeast corner of a called 21.361 acre tract as described in an instrument to Frank Leon Denina and wife Alma Ruth Denina recorded under H.C.C.F. No. E712621, Thence, N 21°13'03" W, along and with the common line of said 21.361 acre tract and said 22.1454 acre tract, at a distance of 1,216.08 feet passing a 2-Inch iron pipe found for the southwest corner of said 2.0000 acre tract and continuing for a total distance of 1,442.32 feet to a 1/2-Inch iron rod inside a 5-Inch metal pipe found for the northwest corner of the herein described tract and the southwest corner of a called 2.5 acre tract as described in an instrument to Gurprit Singh and Jaspreet Bains recorded under H.C.C.F. No. RP-2018-252717;

THENCE, N 69°48'38" E, along and with the southerly line of said 2.5 acre tract, a distance of 476.61 feet to a 1/2-Inch iron pipe with cap stamped "BGE INC" set for the northeast corner of the herein described tract and the southeast corner of said 2.5 acre tract, lying on the east line of said 22.1454 acre tract, same being the west line of a called 12.73942 acre tract as describe in an instrument to C & C Properties, Inc. recorded under H.C.C.F. No. L894620;

THENCE, S 28°04'44" E, along and with the common line of said 22.1454 acre tract and said 12.73942 acre tract, a distance of 1,547.71 feet to a 1/2-Inch iron pipe with cap stamped "BGE INC" set for the southeast corner of the herein described tract and the northeast corner of said 0.3104 acre tract (Parcel 23), lying on the north right-of-way line of said Holderrieth Road, from which a 5/8-Inch iron rod with cap stamped "EE COON" bears S 25°56' E, 20.9 feet, found for the common south corner of said 22.1454 acre tract and said 12.73942 acre tract;

THENCE, S 77°37'17" W, along and with the north right-of-way line of said Holderrieth Road, same being the north line of said 0.3104 acre tract (Parcel 23), a distance of 669.39 feet to the POINT OF BEGINNING and containing 19.34 acres (842,341 square feet) of land, more or less.

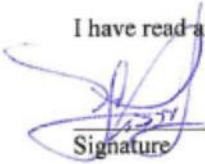
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DM-#8279894.3

- i. A completed City of Tomball PID Application Form (Exhibit A);

**CITY OF TOMBALL
PUBLIC IMPROVEMENT DISTRICT POLICY
AS ADOPTED BY CITY COUNCIL ON MARCH 7, 2022**

I have read and understand this policy.


Signature

4/26/22
Date

Michael J. Pizzola, Jr.
Printed Name

(Please sign and date this page and return to the Project Manager)

ii. Letter from developer requesting consideration of a PID and summary of the special benefits to be received by the development;

HistoryMaker Homes is requesting from the City of Tomball the creation of a Public Improvement District to assist in developer reimbursement of public infrastructure and public parks.

The Seven Oaks community will consist of 141 town homes which will come in packs of 3, 4, 5 & 6. These townhomes will be 1800 SF on average, and are anticipated to have an average sales price of \$310,000. Our target price point is catered to second generation Tomball residents who desire to stay close to the family and friends they grew up with. This community will be managed by a homeowner's association which will allow the Seven Oaks residents to live a life style which demands little in the way of property management and maintenance. The HOA will be responsible for the exterior upkeep of the buildings in the community, as well as the landscaping & amenities throughout the community.

HistoryMaker has had tremendous success in Houston, and other major US cities, in bringing their townhome product to market. Due to design efficiency, HistoryMaker is able to deliver to their customers a level of quality that is unmatched by competing products.

Since HistoryMaker Homes closed on the land on August 31st 2021; Seven Oaks inflationary pressures, driven by the pandemic, has added \$2,956,793 to the budget, or \$22,023 per Lot. It is HistoryMakers desire to deliver a product to its customers that does not cut back, in any way, on the quality of the Seven Oaks Community.

The additional funds the PID will generate will be used to construct a park, and embellish the community's amenity lake and other reserves with high quality features. These amenities include masonry walls, iron fencing to enhance views of the lake, decorative lighting features around the lake, aesthetic fountains, walking trails, entry monumentation, seating areas, and the planting of shade trees. Of the 19.34 acres in the Seven Oaks Community 3.03 acres, or 15.65% of all land, will be used for amenitization. This is a large percent of the Seven Oaks community, and exceeds the percent of amenitized land in comparable Tomball communities (comparison table below).

SEVEN OAKS ADDED AMENITY FEATURES

The creation of the PID for the Seven Oaks community will allow HistoryMaker to add various amenity features to the community that would otherwise not be able to be included in the project. These amenity features are listed below.

- Fenced park area
- Vehicle parking area for park
- Large children's play structure
- Park fencing for child safety
- Pavilion for shade and seating
- Grill
- Additional tree planting and landscaping
- Park benches
- 4 work out stations
- Lake Fountain
- Masonry Fencing
- Lake front iron fencing

SEVEN OAKS - COST OF ADDITIONAL AMENITY FEATURES

PARK ELECTRICAL	
Electrical Meter Loop & Panel (Complete & In-Place)	\$ 6,500.00
Conduit and Wire	\$ 2,400.00
PARK HARDSCAPE	
Concrete Walks, 4 1/2" Thick	\$ 10,625.00
Beaverdam Play Structure - by GameTime	\$ 80,620.00
3.5' Tube Steel Fence	\$ 22,770.00
Benches	\$ 3,900.00
Kiddie Mulch - Mulch Fall Surfacing @ 12" Depth	\$ 6,000.00
Concrete Containment Curb	\$ 2,537.50
Carolina 20'x20' Pavilion by Poligon	\$ 58,053.00
Pilot Rock Charcoal Grill	\$ 496.00
Dumor 70-32TTX - Trash Receptacle	\$ 2,535.00
Dumor 298-60-2TX/S-2 - ADA Picnic Table	\$ 5,703.00
Dumor 298-60TX/S-2 Picnic Table	\$ 4,914.00
PARK IRRIGATION	
Irrigation Controller (Complete & In-Place)	\$ 8,000.00
Irrigation - Shrubs & Groundcover (Drip)	\$ 4,500.00
Irrigation -Turf (Spray)	\$ 1,072.00
Irrigation - Tree Bubblers (2 per Shade tree / 1 per Orn. Tree)	\$ 1,300.00
PARK SOFTSCAPE	
Shrubs & Groundcover: Bed Preparation	\$ 3,900.00
Shrubs & Groundcover: Hardwood Mulch	\$ 3,000.00
Pit Planting Bed Preparation	\$ 260.00
Shade Tree: 45 gal.	\$ 5,850.00
Shrubs & Groundcover: Plant Material	\$ 12,750.00
Common Bermuda, Sod (includes fine grading)	\$ 1,072.00
FITNESS TRAIL @ POND	
Bench(s)	\$ 5,850.00
Body Curl Station - GameTime GTFIT Exercise Station	\$ 3,568.00
Sit Up Station - GameTime GTFIT Exercise Station	\$ 2,908.00
Cardio Walker - GameTime GTFIT Exercise Station	\$ 9,306.00
Step-Up Station - GameTime GTFIT Exercise Station	\$ 1,068.00
Kiddie Mulch - Mulch Fall Surfacing @ 12" Depth @ Exercise Stations	\$ 1,215.00
Concrete Containment Curb @ Exercise Stations	\$ 2,905.00
Pond Fountain - Kasco 3400JF Fountain - Nozzle T.B.D.	\$ 5,000.00
Electrical meter Loop & Panel (Complete & In-Place)	\$ 6,500.00
Conduit & Wire	\$ 2,400.00
5' W Concrete Walk, 4 1/2" Thick	\$ 58,735.00
Lake fountain	\$ 48,500.00
Masonry Fencing	\$ 41,160.00
Contingency / Anticipated Pricing pressure	\$ 43,787.25
TOTAL	\$ 481,659.75

***These improvements will cause HistoryMaker to forfeit 2 lots.**

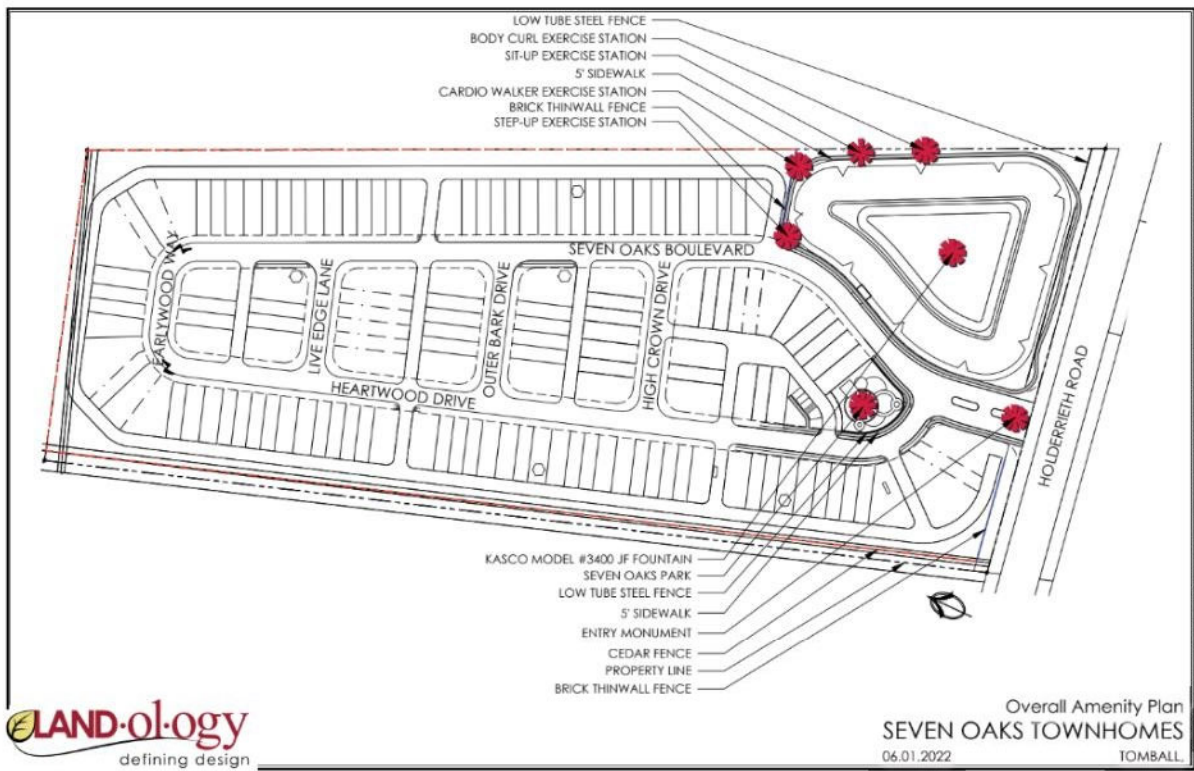


Exhibit I



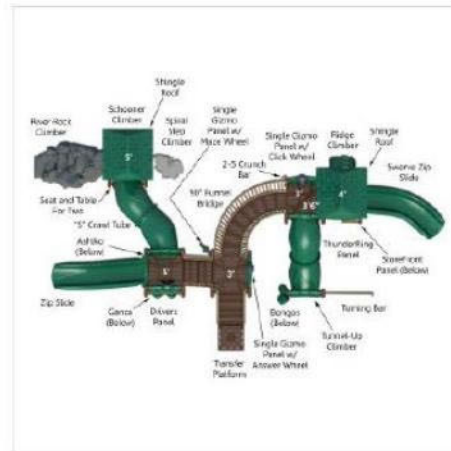
VAULT

Beaverdam

Product Line: PrimeTime

Model # PT15388

PrimeTime is a perfect choice for schools, early learning centers, faith-based organizations and more. With a full range of climbers, slides, ladders and play activities, PrimeTime systems can be configured for any space and any budget, without compromising play or play value.



GameTime Play Structure - \$80,620 Installed Cost Estimate



Body Curl Station



Sit-Up Station



Cardio Walker



Step-Up Station



poligon



FRAME COLOR: SURREY BEIGE
ROOF COLOR: EVERGREEN
CONTACT 800.222.0000 FOR MORE INFORMATION

CAR-20

CAROLINA 20'x20' PAVILION by POLIGON



70-32TTX
TRASH RECEPTACLE
by DUMOR QTY: 1

LAND-ology
defining design

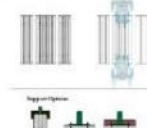


ASW-20 CHARCOAL GRILL
by PILOT ROCK QTY: 1

TABLE 298



Number	Description	Weight
298-001	6' Long Picnic Table	100 lbs.
298-002	6' Long Picnic Table	100 lbs.
298-003	6' Long Picnic Table	100 lbs.
298-004	6' Long Picnic Table	100 lbs.
298-005	6' Long Picnic Table	100 lbs.
298-006	6' Long Picnic Table	100 lbs.
298-007	6' Long Picnic Table	100 lbs.
298-008	6' Long Picnic Table	100 lbs.
298-009	6' Long Picnic Table	100 lbs.
298-010	6' Long Picnic Table	100 lbs.



DuMor

6' TABLE 298 by DUMOR
QTY: 2 (1 ADA ACCESSIBLE)
6' BACKLESS BENCH by DUMOR QTY: 2

Park Equipment
SEVEN OAKS TOWNHOMES
06.01.2022 TOMBALL

THE DESIGN IS A CONCEPTUAL DESIGN AND IS NOT FOR CONSTRUCTION AND SHALL NOT BE USED WITHOUT THE PERMISSION OF LAND-LOGY, LLC.

How will future residents of Seven Oaks benefit from this PID creation.

- Our customers will pay **LESS money** over time due to a PID creation. The 30 year PID assessment payments will be lower than a mortgage that is \$38,500 higher.
- HMH will forfeit 2 lots in order to provide a higher level of *amenities that would otherwise not be part of the community*. These amenities include parks, an outdoor cooking facility, fitness equipment, & enhanced landscaping.

Accounts	7/1/22 Budget with NO PID	7/1/22 Budget with PID	Difference
Engineering Design	\$ 464,785	\$ 464,785	\$ -
Geotechnical Services	\$ 133,000	\$ 133,000	\$ -
Erosion Control	\$ 52,249	\$ 52,249	\$ -
Sanitary Sewer	\$ 3,163,563	\$ 3,163,563	\$ -
Paving	\$ 1,684,516	\$ 1,684,516	\$ -
Electric	\$ 162,513	\$ 162,513	\$ -
Misc. Cost	\$ 99,443	\$ 99,443	\$ -
10510-Unexpected Costs	\$ 417,900	\$ 417,900	\$ -
Land	\$ 1,674,239	\$ 1,674,239	\$ -
Closing Cost	\$ 50,000	\$ 50,000	\$ -
Interest Expense	\$ 348,649	\$ 348,649	\$ -
Legal - Development	\$ 35,000	\$ 35,000	\$ -
City Fees	\$ 2,500	\$ 2,500	\$ -
Excavation / Detention	\$ 511,858	\$ 511,858	\$ -
OS Paving	\$ 33,639	\$ 33,639	\$ -
Landscape	\$ 722,480	\$ 722,480	\$ -
HOA	\$ 50,400	\$ 50,400	\$ -
Taxes	\$ 330,797	\$ 330,797	\$ -
Development management	\$ 143,000	\$ 143,000	\$ -
PID Reimbursement	0	\$ (4,190,142)	\$ (4,190,142)
TOTAL	\$ 10,080,531	\$ 5,890,389	\$ (4,190,142)
# of Lots	\$ 141	\$ 141	\$ (3)
Cost of lot	\$ 71,493	\$ 41,776	\$ (29,717)
Expected sales price of home	\$ 348,500.00	\$ 310,000	\$ (38,500)

Cost Comparison - Assessment vs Decreased home cost	
Total per unit cost of 30 yr. PID assessment	\$ 66,750.00
Total 30 yr. Mortgage cost of \$38,500 @ 6%	\$ 83,097.70
PID cost benefit per customer	\$ 16,347.70

- iii. Evidence that the developer has the expertise, experience, necessary capital, and financial backing to complete the new development to be supported by the District financing. The developer must provide the City with adequate evidence of its committed and anticipated sources of funding to fund the balance of the improvements in the District not eligible to be funded by District issued financing;

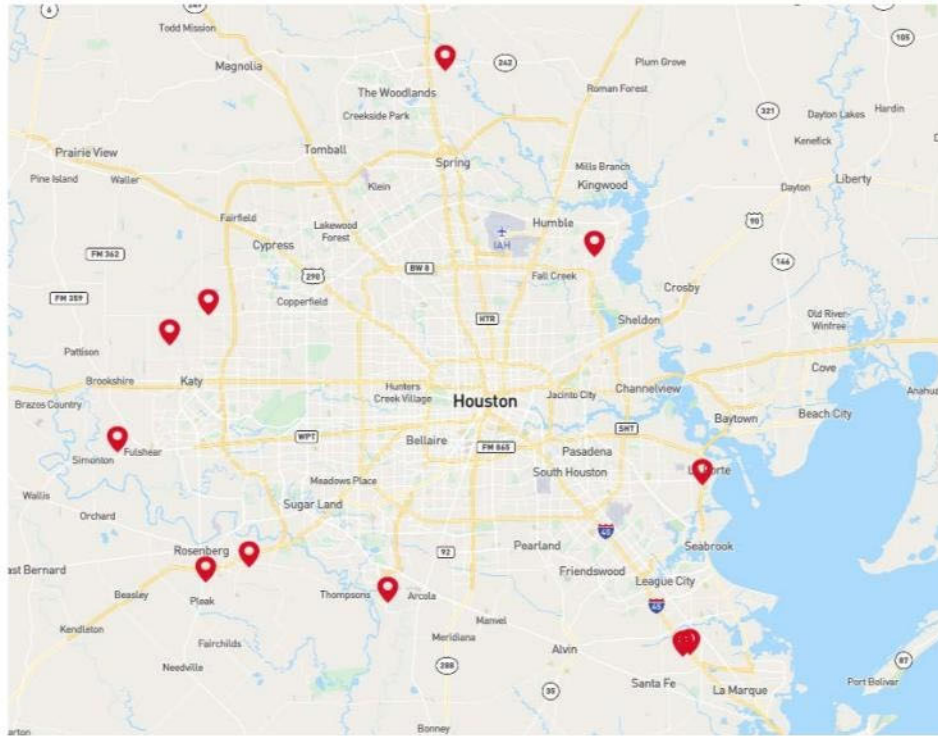
HistoryMaker Homes:

A brief history behind HistoryMaker Homes goes back to pre-World War II. The Mitchell family began building homes in the Fort Worth area in the late 1940's. From there on, the Mitchell family would establish HistoryMaker Homes and would then flourish into the prevalent home builder & developer they are today. After 60 years in the DFW market, History Maker would then open their Houston, TX hub in 2016. Since then, History Maker Homes has constructed quality homes in major master plan communities such as; Sunterra, Artesia Village, Katy Lakes, Summer Lakes, Seabourn Landing, Harpers Preserve, Sienna Townhomes at Parkway Place, & Balmoral. The success of History Maker Homes can be attributable to the company's vision, mission, and core values "To honor God, enrich the lives of stakeholders, and delight customers". History Maker Homes has made strides in the development and home building industry due to their adaptations in technology applications, intelligent construction methods, as well as energy efficiency.

In the past 12 months HistoryMaker has constructed approximately 290 homes in the Houston area, and approximately 846 homes in the Dallas / Fort Worth area. With an average home selling at \$332,700 that is \$378,000,000 in home sales over the past 12 months.

(SEE MAPS ON NEXT PAGE)

HISTORYMAKER COMMUNITY LOCATION MAP (HOUSTON)



Production Builder Ranking *Current Selections* *Sorted By Annual Closings*

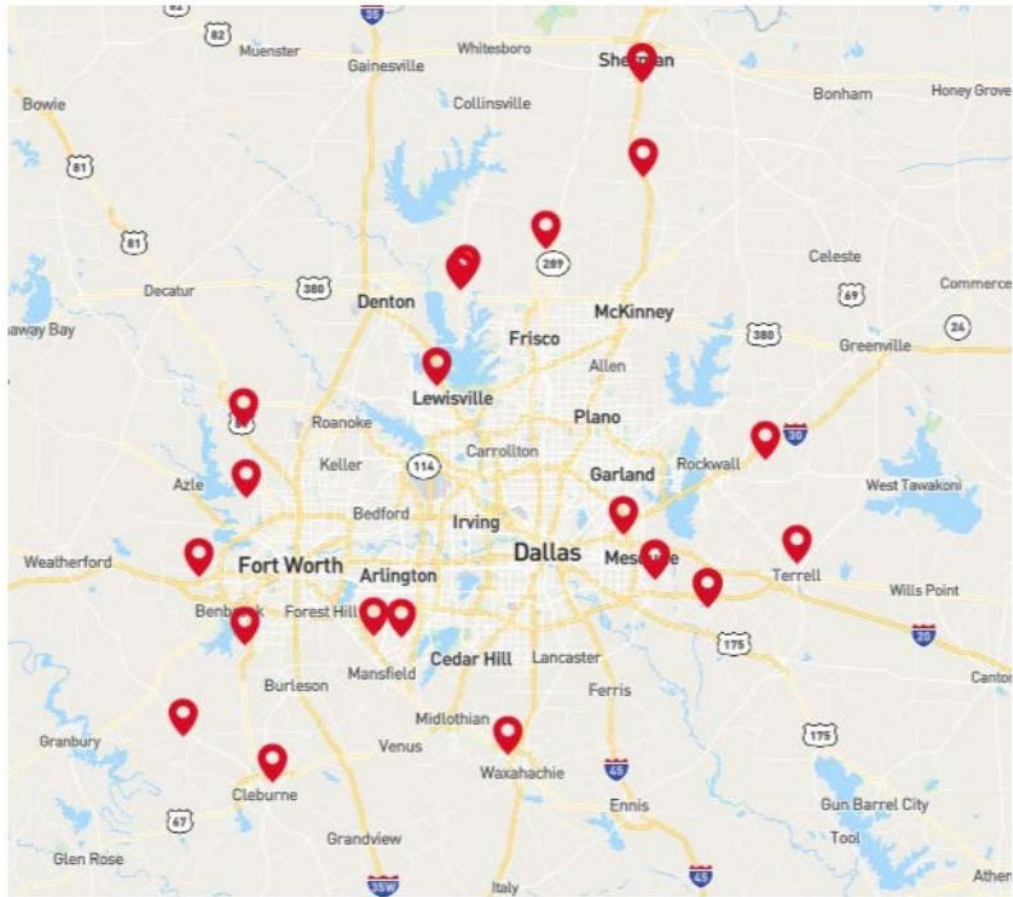
Rank	Builder Name (Production)	Single-Builder Section Closings					Shared Annual Closings	Total Annual Closings	Production Builder Share
		1Q21	2Q21	3Q21	4Q21	Annual			
22	Century Communities	132	228	122	136	618		618	1.69 %
23	Colina Homes	197	162	101	135	595		595	1.63 %
24	Anglia Homes	139	118	129	154	540		540	1.48 %
25	M/I Homes	124	160	130	109	523		523	1.43 %
26	Ashton Woods	99	187	126	95	507		507	1.39 %
27	First America Homes	113	131	131	89	464	2	466	1.28 %
28	Devon Street Homes	56	82	127	125	390		390	1.07 %
29	Pulte	112	103	55	87	357		357	0.98 %
30	Newmark Homes Houston	116	85	76	79	356		356	0.98 %
31	NuHome	81	113	74	80	348		348	0.95 %
32	Village	101	78	70	95	344		344	0.94 %
33	Princeton Classic Hom	73	80	80	80	313		313	0.86 %
34	History Maker Homes	54	77	80	79	290		290	0.79 %

S numbers in this column are based on shared (multiple-builder) sections; in these cases, the annual number is evenly distributed between builders in these sections

Houston Residential Survey (4Q21)
Copyright Metrostudy
Page 1 of 5

metrostudy
Sales: 1-800-227-8839
A harsco company

HISTORYMAKER COMMUNITY LOCATION MAP (DALLAS/FT. WORTH)



Production Builder Ranking									
Current Selections									
Sorted By Annual Closings									
Rank	Builder Name (Production)	Single-Builder Section Closings					Shared Annual Closings	Total Annual Closings	Production Builder Share
		1Q21	2Q21	3Q21	4Q21	Annual			
1	D.R. Horton Homes	937	1,210	968	1,320	4,435	1	4,436	10.80 %
2	Express Homes by DR H	606	795	858	832	3,091		3,091	7.52 %
3	Lennar Homes	580	697	674	677	2,628		2,628	6.40 %
4	Bloomfield Homes	363	572	596	509	2,040		2,040	4.97 %
5	Highland Homes	438	488	483	431	1,840	1	1,841	4.48 %
6	LGI Homes	446	645	362	333	1,786		1,786	4.35 %
7	Meritage Homes	250	333	327	291	1,201		1,201	2.92 %
8	First Texas Homes	269	356	265	186	1,076		1,076	2.62 %
9	Pulte	190	280	223	236	929		929	2.26 %
10	Trophy Signature Home	97	247	294	258	896		896	2.18 %
11	Impression Homes	209	239	150	276	874		874	2.13 %
12	History Maker Homes	190	254	187	215	846		846	2.06 %
13	Starlight Homes by As	87	254	220	259	820		820	2.00 %

Exhibit I

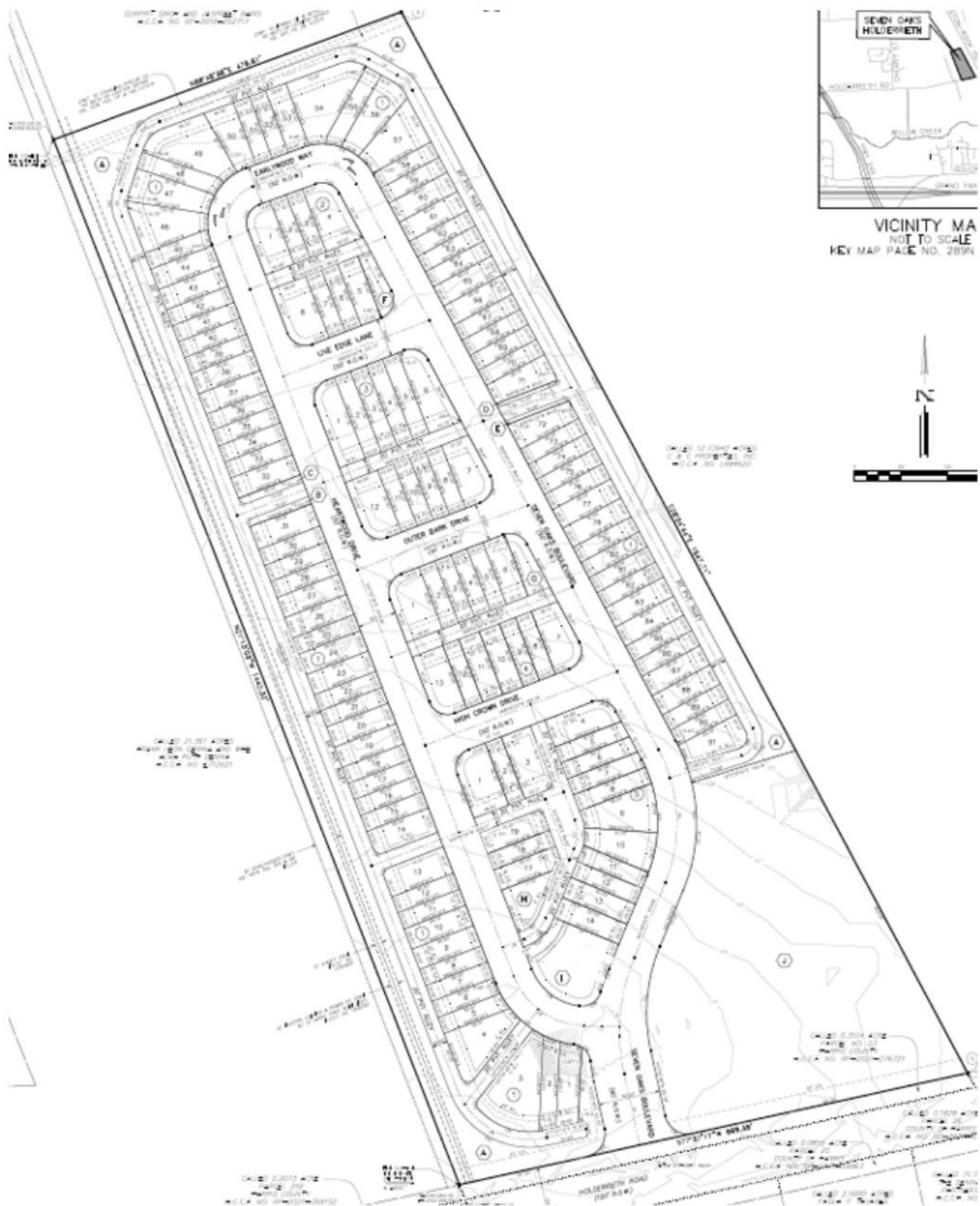


Exhibit I

- v. Identification of how the project will contribute to funding the expansion of arterial and connector streets, major collector roadways or highways, and trunk line utility infrastructure, as applicable when necessary to address the projected demand for services and the impacts of the development;

HistoryMaker's Seven Oaks project will contribute to and enhance the public infrastructure of Tomball in several major ways. Harris County is undertaking a major project which will widen Holderrieth Road, and replace water, sewer, and drainage facilities within the Holderrieth ROW. The Seven Oaks project has caused Harris County to agree to deepen their proposed storm sewer in this area in order to better serve the 7 Oaks community and the land around this area. This action will allow nearby properties to drain to the Holderrieth storm sewer that would have otherwise not been able to. HistoryMaker has agreed to pay for the cost to lower this storm sewer line. HistoryMaker will also be providing a left-hand turn lane which will allow traffic flow to continue while passengers are entering the Seven Oaks community. The detention Pond of Seven Oaks will also enhance the flooding characteristics of the area by detaining storm water that previously sheet flowed off site. Seven Oaks will also sport an amenity pond with walking trails that will be open for public use.

- vi. Identify all project expenses and costs, including acquisition, construction, and any applicable long-term management cost;

Accounts	7/1/22 Budget
Engineering Design	\$ 464,785
Geotechnical Services	\$ 133,000
Erosion Control	\$ 52,249
Sanitary Sewer	\$ 3,163,563
Paving	\$ 1,684,516
Electric	\$ 162,513
Misc. Cost	\$ 99,443
10510-Unexpected Costs	\$ 417,900
Land	\$ 1,674,239
Closing Cost	\$ 50,000
Interest Expense	\$ 348,649
Legal - Development	\$ 35,000
City Fees	\$ 2,500
Excavation / Detention	\$ 511,858
OS Paving	\$ 33,639
Landscape	\$ 722,480
HOA	\$ 50,400
Taxes	\$ 330,797
Development management	\$ 143,000
TOTAL	\$ 10,080,531
# of Lots	\$ 141
Cost of lot	\$ 71,493

- vii. Sources and uses budget and project pro forma detailing projected cash flows over the life of the proposed District including other public sources, private financing, and developer equity contribution to the project;

PROJECT FUNDING DEBT & EQUITY

Accounts	7/1/22 Budget	Equity	Loan
Engineering Design	\$ 464,785	\$ 464,785	
Geotechnical Services	\$ 133,000	\$ 133,000	
Erosion Control	\$ 52,249	\$ 52,249	
Sanitary Sewer	\$ 3,163,563	\$ 3,163,563	
Paving	\$ 1,684,516	\$ 1,266,934	\$ 417,582
Electric	\$ 162,513		\$ 162,513
Misc. Cost	\$ 99,443		\$ 99,443
10510-Unexpected Costs	\$ 417,900		\$ 417,900
Land	\$ 1,674,239		\$ 1,674,239
Closing Cost	\$ 50,000		\$ 50,000
Interest Expense	\$ 348,649		\$ 348,649
Legal - Development	\$ 35,000		\$ 35,000
City Fees	\$ 2,500		\$ 2,500
Excavation / Detention	\$ 511,858		\$ 511,858
OS Paving	\$ 33,639		\$ 33,639
Landscape	\$ 722,480		\$ 722,480
HOA	\$ 50,400		\$ 50,400
Taxes	\$ 330,797		\$ 330,797
Development management	\$ 143,000		\$ 143,000
TOTAL	\$ 10,080,531	\$ 5,080,531	\$ 5,000,000

PROJECTS ELEGIBLE FOR REIMBURSEMENT VIA PID FUNDS

Accounts	7/1/22 Budget	Costs eligible for PID reimbursement
Engineering Design	\$ 464,785	\$ 428,599
Geotechnical Services	\$ 133,000	\$ 122,645
Erosion Control	\$ 52,249	\$ 52,249
Sanitary Sewer	\$ 3,163,563	\$ 2,917,263
Paving	\$ 1,684,516	\$ 1,102,345
Electric	\$ 162,513	
Misc. Cost	\$ 99,443	
10510-Unexpected Costs	\$ 417,900	
Land	\$ 1,674,239	
Closing Cost	\$ 50,000	
Interest Expense	\$ 348,649	
Legal - Development	\$ 35,000	
City Fees	\$ 2,500	
Excavation / Detention	\$ 511,858	
OS Paving	\$ 33,639	\$ 33,639
Landscape	\$ 722,480	\$ 722,480
HOA	\$ 50,400	
Taxes	\$ 330,797	
Development management	\$ 143,000	
TOTAL	\$ 10,080,531	\$ 5,379,220

SEVEN OAKS CASH FLOW

TOTAL EXPENSES													
Accounts	Budget	Q42021	1/1/2022	2/1/2022	3/1/2022	4/1/2022	5/1/2022	6/1/2022	7/1/2022	8/1/2022	9/1/2022	10/1/2022	11/1/2022
A. Engineering Design	\$ 464,785.27	-											
B. Geotechnical Services	\$ 183,928.36	-	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95	\$ 33,198.95
C. Erosion Control	\$ 52,249.00	-					\$ 22,991.04	\$ 22,991.04	\$ 22,991.04	\$ 22,991.04	\$ 22,991.04	\$ 22,991.04	\$ 22,991.04
D. Sanitary Sewer	\$ 2,672,108.84	-					\$ 6,531.13	\$ 6,531.13	\$ 6,531.13	\$ 6,531.13	\$ 6,531.13	\$ 6,531.13	\$ 6,531.13
E. Pavine	\$ 1,626,304.85	-							\$ 890,702.95	\$ 890,702.95	\$ 890,702.95	\$ 890,702.95	\$ 890,702.95
F. Electric	\$ 162,512.87	-									\$ 542,101.62	\$ 542,101.62	\$ 542,101.62
G. Misc. Cost	\$ 77,143.22	-											
H. Contingency	\$ 346,972.37	-					\$ 9,642.90	\$ 9,642.90	\$ 9,642.90	\$ 9,642.90	\$ 9,642.90	\$ 9,642.90	\$ 9,642.90
I. Interest Expense	\$ 348,649.00	-	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50	\$ 24,903.50
J. Legal - Development	\$ 10,000.00	-	\$ 10,000.00										
K. Misc Application Fees/Permits	\$ 50,000.00	-					\$ 12,500.00	\$ 12,500.00	\$ 12,500.00	\$ 12,500.00			
L. Environmental Report	\$ 20,000.00	-	\$ 20,000.00										
M. Clearing and Demo	\$ 125,663.00	-		\$ 125,663.00									
N. Excavation / Detention	\$ 329,795.30	-					\$ 109,931.77	\$ 109,931.77	\$ 109,931.77				
O. Off Site Paving	\$ 107,236.35	-							\$ 53,618.18	\$ 53,618.18			
P. Landscape	\$ 1,199,489.35	-											
Q. HOA	\$ 50,400.00	-											
Totals	\$ 7,827,237.79	-	\$ 20,000.00	\$ 68,102.45	\$ 183,765.45	\$ 58,102.45	\$ 58,102.45	\$ 254,396.52	\$ 254,396.52	\$ 1,198,717.65	\$ 1,088,785.88	\$ 1,564,769.32	\$ 674,066.37
TOTAL INCOME													
Accounts	Budget												
LOT SALE/TRANSFER TO NMH	\$ 7,827,237.79	-											

SEVEN OAKS EXPECTED SALES		
Date	Monthly	Cumulative
3/1/2023	6	6
4/1/2023	6	12
5/1/2023	6	18
7/1/2023	6	30
8/1/2023	6	36
9/1/2023	6	42
10/1/2023	6	48
11/1/2023	6	54
12/1/2023	6	60
1/1/2024	6	66
6/1/2024	6	96
7/1/2024	6	102
9/1/2024	6	114
11/1/2024	6	126
12/1/2024	6	132
1/1/2025	6	138
2/1/2025	3	141

- viii. Demonstration of financial capability, solvency, and generally the necessary capital to meet project costs through project completion;
- i. This could include, but is not limited to, at least three years of financial statements, complete sources and uses budget, and letters of credit or letters of support from bank or lending institutions.



April 26, 2022

Frost Bank
640 Taylor Street,
Fort Worth, TX 76102

Mr. Matt Wiggins
CFO
History Maker Homes
1038 Texan Trail
Grapevine, TX 76051

Project Name: Seven Oaks
Description: 143 Townhomes Development

HMH Lifestyles, LP ("Borrower") has entered into a Loan Agreement ("Agreement") with Frost Bank ("Lender") for \$5,000,000 ("loan") covering the development and improvements of the Seven Oaks Development located in Tomball, Texas.

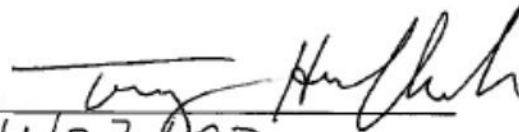
Lender has reviewed the Borrowers financial statements, and has determined Borrower to have the necessary financial capacity to successfully complete the development of the Seven Oaks community. Lender and Borrower have worked together on past residential projects, and feel confident in Borrowers development capabilities.

Tony Holzbach

Frost Bank

Signature

Date


4/27/2022

- ix. Demonstration of previous experience developing similar scale and types of projects;

Please reference the HistoryMaker current project maps and city ranking by closings in section iii. HistoryMaker has developed and constructed homes in many communities in the Houston area as you can see in the following chart.

Houston area projects

Map No	Subdivision Name
	Artesia Village
	Balmoral/
	Balmoral/Gated
	Balmoral/THs
	Country Lake Estates Village
	Fulshear Lakes
	Harper's Preserve/East Village
	Harper's Preserve/South Village
	Hidden Creek/Preserve
	Katy Lakes
	Klein Grove
	Lakes at Mason Park
	Legends Trace/Wrights Landing
	Seabourne Landing
	Seven Oaks Holderreith
	Sienna/Sawmill Lake/Parkway
	Sierra Vista/Gated
	Summer Lakes
	Sunterra/
	Sunterra/MP
	Vanbrooke

- xi. Indication of the estimated costs of proposed improvements, maximum assessment, maximum bond issuance, and maximum tax equivalent rate (in dollars, \$).

**ESTIMATED COST OF PROPOSED IMPROVEMENTS, MAX. ASSESEMENT, MAX. TAX EQUIVELENT RATE
IN DOLLARS**

Number of homes	141
AVG home price	\$ 310,000
Annual assesement per lot	\$ 2,225.00
Implied PID tax Rate (%)	0.718%

LOWEST implied PID tax in Tomball

Seven Oaks will have the lowest implied PID tax at the time of approval than any other community in Tomball (.72%). The Seven Oaks PID assessment will have a smaller financial burden on its residents than all 9 active or proposed PID's in the Tomball area.

	Project	Year Community built	Lots	Acerage	Assesment	HCAD avg. taxable value in the year after home construction	Implied PID tax at time of creation	Years (15-30)	Cash Flow or Bond Sale
1	Seven Oaks	Under Development	141	19	\$ 2,225.00	\$ 310,000.00	0.72%	30	Bond Sale
2	Raburn Reserve	Under Development	133	105	\$ 3,007.15	\$ 400,000.00	0.75%	30	Bond Sale
3	Yaupon Trails	2015	37	12	\$ 2,390.00	\$ 314,273.17	0.76%	15	Cash Flow
4	Copper Cove	2017	52	13.46	\$ 1,960.00	\$ 254,821.50	0.77%	15	Cash Flow
5	Grand Junction	2018	49	12.37	\$ 1,800.00	\$ 217,623.67	0.83%	15	Cash Flow
6	Raleigh Creek	2007	265	138	\$ 2,985.00	\$ 354,308.17	0.84%	15	Cash Flow
7	Timber Trails	2019	103	22.3	\$2,346.00	\$ 270,815.00	0.87%	15	Cash Flow
8	Wood Leaf Reserve	Under Development	299	90.54	\$ 2,819.67	\$ 315,000.00	0.90%	30	Bond Sale
9	Alexander Estates	2019	87	75.7	\$3,030.00	\$ 329,415.83	0.92%	15	Cash Flow

EXHIBIT J
CONCEPT PLAN

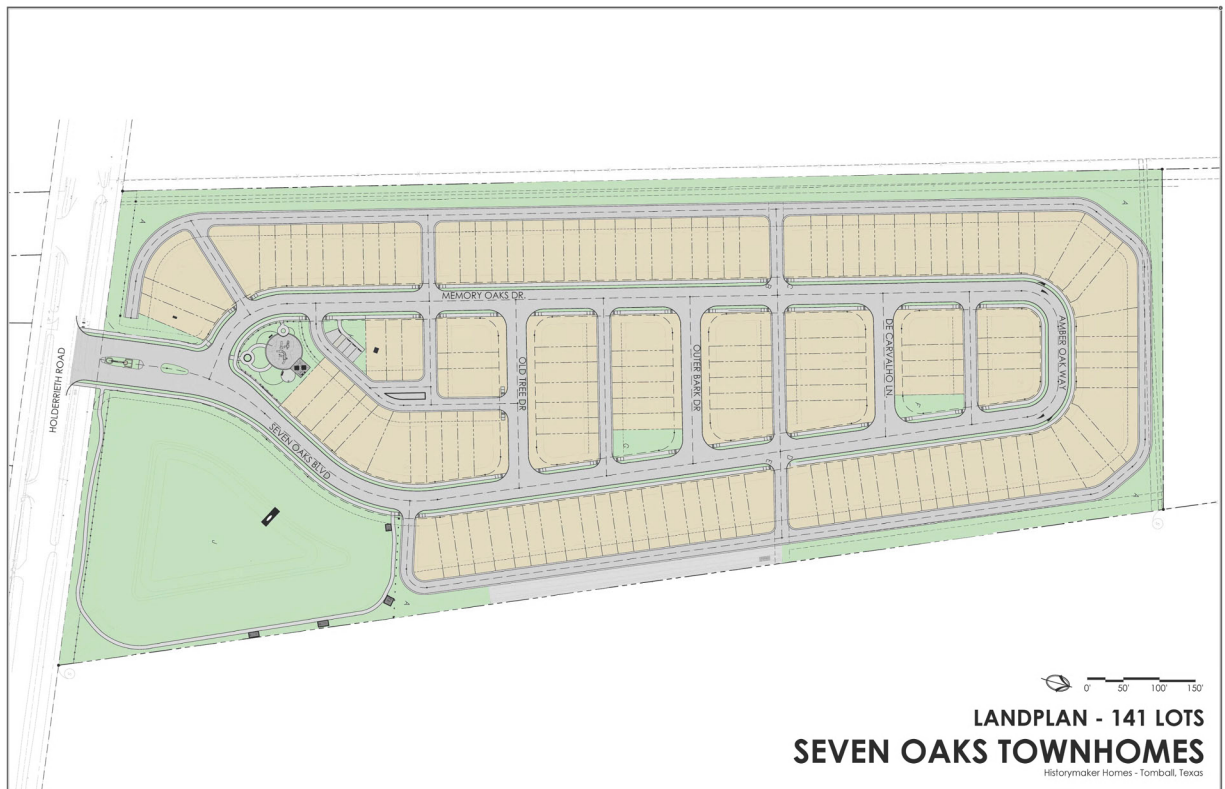


Exhibit J

EXHIBIT K

AMENITIES

The creation of the PID for the Seven Oaks community will allow HistoryMaker to add various amenity features to the community that would otherwise not be able to be included in the project. These amenity features are listed below.

- Fenced park area
- Vehicle parking area for park
- Large children's play structure
- Park fencing for child safety
- Pavilion for shade and seating
- Grill
- Additional tree planting and landscaping
- Park benches
- 4 work out stations
- Lake Fountain
- Masonry Fencing
- Lake front iron fencing



SEVEN OAKS ADDITIONAL AMENITY FEATURES
PARK ELECTRICAL
Electrical Meter Loop & Panel (Complete & In-Place)
Conduit and Wire
PARK HARDSCAPE
Concrete Walks, 4 1/2" Thick
Large Play Structure -
3.5' Tube Steel Fence
Benches at specified locations
Mulch - Mulch Fall Surfacing @ 12" Depth
Concrete Containment Curb
20'x20' Pavilion - Polygon
Rock Charcoal Grill
Trash Receptacle
ADA Picnic Table
Picnic Table
PARK IRRIGATION
Irrigation Controller (Complete & In-Place)
Irrigation - Shrubs & Groundcover (Drip)
Irrigation - Turf (Spray)
Irrigation - Tree Bubblers (2 per Shade tree / 1 per Orn. Tree)
PARK SOFTSCAPE
Shrubs & Groundcover: Bed Preparation
Shrubs & Groundcover: Hardwood Mulch
Pit Planting Bed Preparation
Shade Tree: 45 gal.
Shrubs & Groundcover: Plant Material
Common Bermuda, Sod (includes fine grading)
FITNESS TRAIL @ POND
Benches at specified locations
Body Curl Station
Sit Up Station
Cardio Walker
Step-Up Station
Mulch - Mulch Fall Surfacing @ 12" Depth @ Exercise Stations
Concrete Containment Curb @ Exercise Stations
Pond Fountain
Electrical meter Loop & Panel (Complete & In-Place)
Conduit & Wire
5' W Concrete Walk, 4 1/2" Thick
Lake fountain
Masonry Fencing

