GRAYLOU GROVE DEVELOPMENT AGREEMENT

BETWEEN

FLS DEVELOPMENT, LLC A LIMITED LIABILITY COMPANY

AND

THE CITY OF TOMBALL, TEXAS

Dated: _____, 2024

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GRAYLOU GROVE DEVELOPMENT AGREEMENT

This Graylou Grove Development Agreement (this "**Agreement**"), dated as of _____, 2024 (the "**Effective Date**"), is entered into between FLS DEVELOPMENT, 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 owns and is developing approximately 50.1 acres of real property described in Exhibit A-1 attached hereto (the "Total Property"), partially in the City's extraterritorial jurisdiction ("ETJ"), and partially in the corporate limits of the City; 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 Total Property through the financing of certain public infrastructure (the "Public Improvements" as defined herein); and

WHEREAS, in order to finance the Public Improvements, the City Council intends to create one public improvement district (the "PID") encompassing the 43.149 acres described in Exhibit A-2 attached hereto ("Property") in accordance with Chapter 372 Texas Local Government Code, as amended (the "PID Act" in order to finance certain Public Improvements from Assessments levied on benefitted parcels within the Property); 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; and

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

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 FLS Development, 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 Graylou Grove Development amenities to be constructed by the Developer and owned by the Developer or the HOA, as set forth in Exhibit I.

"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 the 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 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 the land in the PID, if any.

"City Representative" means the Mayor 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.

"Completion Date" means a date that is no later than twenty-four (24) months after Commencement of Construction for the Public Improvements. Such date may be extended by two six (6) month extensions that may be granted by the Mayor upon request of the Developer.

"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 FLS Development, LLC, a Texas limited liability company, its successors and permitted assigns.

"Development" means the Graylou Grove Development, a residential development to be developed and constructed on the Total Property pursuant to the City Regulations.

"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, 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 9.01.

"HOA Maintenance Agreement" is defined in Section 9.01

"HOA Maintained Improvements" is defined in Section 9.01.

"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.

"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 E.

"Impact Fees" means all utility impact fees relating to the Public Improvement 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.

"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.

"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 10.03, the form of which is attached as Exhibit F.

"PD" or "PD Zoning" means the Planned Development Zoning District Ordinance to be approved by the City, as may be amended pursuant to City Regulations, and when approved by the City is made a part hereof and attached hereto as Exhibit B.

"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 Graylou Grove Public Improvement District, encompassing the Property.

"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 in each Phase to get to a Final Lot Value.

"Professional Services Agreement" means that certain agreement between the City and the Developer 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 the approximately 43.149 acres located partially in the corporate limits of the City and partially within the ETJ of the City, as described in Exhibit A-2 hereto.

"Total Property" means approximately 50.105 acres located partially in the corporate limits of the City and partially within the ETJ of the City, as described in Exhibit A-1 hereto.

"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, which will include improvements described in Exhibit C.

"Public Improvement Financing Date" means the date by which the City must levy Assessments on the Property, such date to be no later than December 31, 2025 which date may be extended by written agreement of the Parties.

"Public Improvement Completion Date" means a date that is no later than twenty-four (24) months after Commencement of Construction for the Public Improvements to be funded by the PID Bonds. Such date may be extended by one six (6) month extension that may be granted by the City Manager upon request of the Developer.

"Reimbursement Agreement(s)" means the agreement(s) entered into between the City and the Developer in which Developer agrees to fund 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 reimbursement to the Developer for the Public Improvement Project Costs equal to the lesser of (i) the Actual Costs of the Public Improvements, or (ii) $8,000,000, from any source.

"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.

Total Property means approximately 50.1 acres of real property located in part within the corporate limits of the City and in part within the extraterritorial jurisdiction of the City, as described in Exhibit A-1 hereto.

"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 87 single family homes; and

(ii) Amenities set forth in Exhibit I.

(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 and Applicable Law.

(c) Upon completion and acceptance by the City, the Public Improvement shall own be owned by the City and shall be maintained by the City.

(d) The Developer shall construct or cause to be constructed, the Amenities as set forth in Exhibit I 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 shall request the creation of a PID over a portion of the Property by submitting a petition to the City that contain a list of the Public Improvements to be financed by the PID and the estimated or actual costs of such Public Improvements in the PID. Upon receipt of such petition, the City shall consider such petition by resolution and schedule a public hearing to consider the creation of the PID in accordance with the PID Act. Developer has previously entered into a professional services agreement that obligates Developer to fund the costs of the City's professionals relating to the creation of the PID, the levy of Assessments in the PID and any PID Bond financing costs, 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 authorize the issuance of PID Bonds in one or more series up to an aggregate principal amount of $8,000,000 to 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 shall be as set forth 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) 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 Developer shall have requested, in writing, the issuance of PID Bonds;

(ii) The Developer shall have submitted to the City all requested and required information necessary to evaluate a PID Bond issuance and to accomplish the levy of Assessments and the issuance of PID Bonds, which information shall include:

A. Total acreage of residential property, commercial property, open space, multi-family property, non-developable property within the Property for which Assessments are to be levied;

B. Engineers' opinion of probable costs (dated within the last 3 months prior to submission) for all improvements for which Assessments are to be levied;

C. Any required Traffic Impact Analysis improvements for which Assessments are to be levied;

D. Break out of total offsite costs to serve the PID for which Assessments are to be levied;

E. Break out of total oversizing costs of improvements within the PID for which Assessments are to be levied;

F. Breakout of phased costs for all phases versus any major improvement cost within the PID;

G. Assumptions for number of residential lots.

1. Total number of lots by type;

2. Total estimated value per lot;

3. Total estimated value of final home value;

4. The values provided in 1-3 above based on phasing plan/absorption schedule

H. Map of Property

I. Concept Plan

1. With construction phasing identified by map and cost

2. Location of any open space maintained by HOA

3. Total acreage of open space maintained by HOA

4. Map/locations of improvements to be financed by the PID

5. Onsite improvements

6. Offsite improvements

J. Final private costs (not including the public improvement costs) to reach completed lots (i.e., final lot benching, stablilization,etc.)

(iii) The maximum aggregate par amount of the PID Bonds to be issued by the City shall not exceed $8,000,000.

(iv) The Assessments shall have been levied at the amount requested by the Developer up to a maximum "tax rate" for the Assessments not to exceed $0.95 per $100 of assessed value at the time of the levy of the Assessments, based on the Estimated Build Out Value of each lot as determined at the time of the levy of the Assessments. Such "tax rate" applies on an individual assessed parcel basis by lot type based on Estimated Build Out Value, as set forth in the Service and Assessment Plan.

(v) unless otherwise agreed by the Parties, 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 ("VTL") for a series of PID Bonds for the PID is at least 3:1 at the time of the issuance of PID Bonds; such values shall be confirmed by an appraisal from a licensed MAI appraiser. At the City's sole discretion, the PID Bonds may be issued at a a lower VTL and proceeds of PID Bonds would then be restricted and shall only be disbursed only at a 3:1 lien ratio, and the Indenture may contain a provision for the redemption of PID Bonds from unexpended proceeds after the expiration of three (3) years after issuance of the PID Bonds. If the City agrees to such lower value to lien ratio, the Developer shall provide to the City, if requested, certifications regarding the building and construction of the development for purposes of the City's obligations under Federal tax law. The Developer may request to City Council, in its sole discretion, to levy Assessments or issue PID Bonds at a lower value to lien ratio.

(vi) 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 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.

(vii) 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;

(viii) The Property must have been annexed into the corporate limits of the City.

(ix) The Public Improvements must have been completed.

(x) The PID Bonds must be marketable by a reputable Underwriter to a reputable purchaser at a reasonable rate of interest as determined by the City's financial advisor.

(xi) PID bonds may not be issued through a third-party conduit and all PID bond issues must be approved by the Texas Attorney General;

(xii) The Developer shall have agreed to any continuing disclosure requirements required by the Underwriter or by the purchasers of the PID Bonds and shall be current in all past continuing disclosure obligations.

(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. Developer Cash Contribution.

(a) At closing on the PID Bonds intended to fund construction of Public Improvements, if the PID Bond Proceeds are not sufficient to pay the Public Improvement Project Costs for the Phase to which such PID Bond Proceeds relate, the Developer shall be required to provide cash in the amount of the difference between the Public Improvement Costs and the amount of PID Bond Proceeds available and minus any approved Developer expenditures of Public Improvement Project Costs as confirmed and approved by the City or its PID administrator (the "Deficit") as illustrated below:

Total Amount of Public Improvement Project Costs being finance by Bond Proceeds
- PID Bond Proceeds deposited to Project Fund
- Verified and approved Developer expenditures of Public Improvement Project Costs
= Total amount of Deficit

For the Deficit, the Developer, must deposit cash in the amount of Deficit to a designated account under the applicable Indenture from which funds may be drawn to pay the Public Improvement Project Costs. The determination of the amount of the Deficit shall be estimated prior to pricing of the PID Bonds and shall be finalized within five (5) days of pricing of the PID Bonds. Any required cash deposit shall be provided at closing of the applicable series of PID Bonds. No funds shall be disbursed from the Project Fund until the Deficit has been funded as provided herein.

Section 3.04. Apportionment and Levy of Assessments.

(a) The City intends to levy Assessments on property located within the PID in accordance with this Agreement, the Service and Assessment Plan (as updated or amended from time to time), and the Assessment Ordinance on or before the Public Improvement Financing Date. The Assessments, if levied, shall be levied pursuant to either a Reimbursement Agreement or the issuance of PID Bonds, all subject to City Council discretion. 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 PID 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 3.05. Transfer of Property. Notwithstanding anything to the contrary contained herein, no sale of property within a Phase of the PID in which Assessments are to be levied, shall occur prior to the City's levy of Assessments in the PID unless the Developer 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 Total 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 Total Property, shall be in compliance with the then current applicable City Regulations.

Section 4.02. 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 Total 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 Total Property, shall be in compliance with the City Regulations, and the PD. Upon approval by the City of an updated PD, this Agreement shall be deemed amended to include such approved updated items.

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. 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 pursuant to the Professional Services Agreement prior to any taking of land by the City.

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. Fees. Development of the Property shall be subject to payment to the City of all fees charged pursuant to the City Regulations and the City's master fee schedule, including Impact Fees.

Section 4.06. Zoning. The Developer consents and agrees to the zoning of the Property pursuant to the planned development process and that such zoning shall be consistent with the PD.

Section 4.07. Excluded Street Development. (a) Except as specified below, the Developer shall not be responsible for paving Medical Complex Boulevard to and through and will only be responsible for paving the portion of Medical Complex Boulevard located within the Property, to serve the development. The limits of Medical Complex Boulevard shall connect Hufsmith Kohrville Road to the easternmost ultimate intersection and provide temporary pavement for a turnaround, access to the proposed amenities, as reflected in Exhibit B; provided, however, that the Developer will construct the drainage with capacity for Medical Complex Boulevard for full build-out of the road based upon the City's requirements. If, when Medical Complex Boulevard is fully constructed to and through, the City determines that the drainage improvements were not constructed to handle full build-out of Medical Complex Boulevard, the Developer shall be required to remediate the drainage improvements to the City's standards for the fully constructed road. The Tomball Economic Development Corporation (the "EDC") will fund the portion of Medical Complex extending thru the commercial portion and the Developer will be responsible to fund and construct matching footage funded by the EDC.

(b) Developer shall not be responsible for connecting the Total Property by pavement or, utility, or any other manner with Country Club Green South, as reflected in Exhibit B.

ARTICLE V

ANNEXATION

Section 5.01. Annexation of Land into the City. (a) Following (i) the City's creation of the PID and, (ii) approval of this Agreement, the Developer shall petition the City to annex the portion of the Total Property currently within the City's ETJ into the corporate limits of the City. (the "Annexation Petition") The City shall annex such property described in the Annexation Petition pursuant to ordinance in accordance with Applicable Law (the "Annexation Ordinance")

(b) In the event the City proposes to zone the Total Property inconsistent with the provisions of this Agreement, the City acknowledges that Developer may withdraw such petition to annex the Total Property, and Developer immediately shall petition the City to dissolve the PID.

Section 5.02. Zoning. In conjunction with the submittal of the Annexation Petition, the Developer shall deliver an application for the zoning of the Property substantially consistent with the Planned Development attached hereto as Exhibit "B" it is in compliance with City Regulations

(the "Zoning Application"). The Annexation Ordinance and the zoning ordinance shall be set for the same City Council agenda.

Section 5.03. CCN Release. The Developer shall cause the Total Property to be released from the CCN of Aqua Texas no later than the date upon which the Annexation Ordinance is considered.

ARTICLE VI

CONSTRUCTION OF THE PUBLIC IMPROVEMENTS

Section 6.01. 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, 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%.

(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 Attorney. 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, 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 6.02. 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.

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

(i) Plans and specifications shall comply with all Applicable Law, the 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) <u>City's Role</u>.

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 6.03. 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 6.04. 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 6.05. 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 6.06. 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 6.07. 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 or by any other governmental entity 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 6.08. 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 6.09. 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, and any revisions to such schedule;

(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 to reimburse the City for out-of-pocket costs actually incurred by the City that are directly related to the City's necessary emergency 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 6.10. 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 SAP, 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 SAP.

Section 6.11. City Police Powers.

The Developer recognizes the authority of the City pursuant to the Texas Constitution together with the City's 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 6.12. 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 6.13. 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 6.14. 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 6.06, 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 6.15. 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.

ARTICLE VII

PAYMENT OF PUBLIC IMPROVEMENTS

Section 7.01. 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 or another governmental entity, as designated by the City or another entity as designated by the City pursuant to an agreement, 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 PID Bond Proceeds or available 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 7.02. 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, after the Completion of Construction of a Public Improvement payment or 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 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 7.03. 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 7.04 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 Indenture or Reimbursement Agreement. The City and PID administrator shall review the sufficiency of each Payment Certificate with respect to compliance with this Agreement, compliance with the City Regulations ,the PD and Applicable Law, and compliance with the applicable SAP and Plans and Specifications within thirty (30) 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 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 7.04. 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 may 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, if requested by the Developer and agreed to by the City. 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.

(e) Notwithstanding the above, if the land in each Phase of development is not annexed into the City and removed from the applicable MUD, the City shall not levy Assessments on such land.

Section 7.05. 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 VIII

REPRESENTATIONS AND WARRANTIES

Section 8.01. 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 8.02. 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 a Texas limited liability company 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 IX

MAINTENANCE OF CERTAIN IMPROVEMENTS

Section 9.01. Mandatory Home Owners' Association.

(a) The Developer will create a mandatory homeowners' association ("HOA") over the portion of the Property being developed as single family homes ("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) The Developer and the HOA shall maintain and operate any open spaces, nature trails, amenity center, common areas, landscaping, detention ponds, screening walls, development signage and any other common improvements or appurtenances within the Property that are not maintained or operated by the City. For any improvements financed by the PID, the City and the Developer (or the HOA) must enter into an agreement for such maintenance.

(c) 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.

(d) Covenants, conditions and restrictions for the HOA must be filed and executed before any certificates of occupancy are issued within the Property.

ARTICLE X

TERMINATION EVENTS

Section 10.01. Developer Termination Events.

(a) The Developer may terminate this Agreement (i) upon an uncured Event of Default by the City, (ii) if the City does not levy assessments on the Property by the Public Improvement Financing Date, (iii) the City does not create the PID with thirty (30) days of approval of this Agreement, or (iv) the Developer withdraws its petition for Annexation pursuant to Section 5.01(b).

Section 10.02. City Termination Events.

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

(b) 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.

(c) The City may terminate this Agreement and any Reimbursement Agreement if the Annexation Petition is not submitted within thirty (30) days after the approval of the Resolution creating the PID.

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

(e) The City may terminate this Agreement and any Reimbursement Agreement if Assessments are not levied by the Public Improvement Financing Date.

Section 10.03. 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 10.04. 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 XI

TERM

This Agreement shall terminate upon the earlier of (i) the expiration of twenty (20) years from the Effective Date, (ii) the date on which the City and the Developer discharge all of their obligations hereunder, including Completion of Construction of the Public Improvements or payment or reimbursement of the Public Improvement Project Costs pursuant to this Agreement (up to the Reimbursement Cap) (iii) an Event of Default under Article XII herein or (ii) the occurrence of a termination event under Article X.

ARTICLE XII

DEFAULT AND REMEDIES

Section 12.01. 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;

(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; or

Section 12.02. 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 12.03. 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 12.04. 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 12.05. 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 12.06. Sovereign Immunity.

(a) Except as specifically required to enforce the terms of this Agreement by Developer, 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 may not include consequential damages or exemplary damages; and

(iii) Developer is not entitled to specific performance or injunctive relief against the City.

Section 12.07. Limitation on Damages.

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

Section 12.08. 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 XIII

INSURANCE, INDEMNIFICATION AND RELEASE

Section 13.01. 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 13.02. 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 13.03. 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 13.04. 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 13.05. 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 13.06. 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 XIV

GENERAL PROVISIONS

Section 14.01. 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, Texas 77357
With a copy to:	Attn: City Attorney Olson & Olson, LLP 2727 Allen Parkway, Suite 600 Houston, Texas 77019
To the Developer:	Attn: Kyle Friedman FLS Development, LLC 17119 Lakeway Park Drive Tomball, Texas 77375
With a copy to:	Attn: Tim Green Coats Rose 9 Greenway Plaza, Suite 1000 Houston, Texas 77046

Section 14.02. 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 14.03. 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 make any representations with respect to any 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 or execute any document 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 14.04. 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 14.05. 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 14.06. 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 14.07. 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 14.08. 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 14.09. 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 14.10. 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 14.03 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 14.11. 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 14.12. 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 $500.00 fee to the City, the Mayor, 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 14.13. 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 14.14. Compliance with Homebuyer Disclosure Program. The Developer shall comply with the Homebuyer Disclosure Program attached hereto as Exhibit H.

Section 14.15. 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 14.16. Exhibits.

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

Section 14.17. 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 14.18. 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 14.19. No Acceleration.

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

Section 14.20. 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 14.21. 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 14.22. 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 14.23. 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/purcasing/docs/iran-list.pdf, or
https://comptroller.texas.gov/purchasing/docs/flo-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 than controls, is controlled by, or is under common control with the Developer and exists to make a profit.

Section 14.24. Petroleum. 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. 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. Notwithstanding anything contained herein, the representations and covenants contained in this Section 14.24 shall survive termination of the Agreement until the statute of limitations has run.

Section 14.25. Firearms. 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. 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, (a) '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), 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. Notwithstanding anything contained herein, the representations and covenants contained in this Section 14.25 shall survive termination of the Agreement until the statute of limitations has run.

Section 14.26. Anti-Boycott. 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, 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. 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. Notwithstanding anything contained herein, the representations and covenants contained in this Section 14.26 shall survive termination of the Agreement until the statute of limitations has run.

Section 14.27. Form 1295. The Developer will provide a completed and notarized Form 1295 generated by the Texas Ethics Commission's electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the Texas Ethics Commission (a "Form 1295"), in connection with entry into this Agreement. Upon receipt of the Developer's Form 1295, the City agrees to acknowledge the Developer's Form 1295 through its electronic filing application. The Developer and the City understand and agree that, with the exception of information identifying the City and the contract identification number, the City is not responsible for the information contained in the Developer's Form 1295 and the City has not verified such information.

Section 14.28. 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]

DEVELOPER

FLS Development LLC, a Texas,

limited liability company

By: _____
Name: _____
Title: _____
Date: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared **_____,** 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 _____ and duly authorized representative of _____, an _____, 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 _____, 2024.

_____
_____
Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A-1

TOTAL PROPERTY DESCRIPTION

OVERALL ACREAGE

49.301 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, Harris County, Texas, being that certain called 31.994 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-170674, that certain called 17.307 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-171232, a portion of that certain Reserve "A" and Lot 1 of Brandt Holdings, a subdivision as shown on map or plat recorded under Film Code Number 679589 of the Map Records of Harris County, Texas, a portion of those certain Lots 489, 490, 495, 496, 497 and 498 of Tomball Townsite, a subdivision as shown on map or plat recorded under Volume 2, Page 65 of the Map Records of Harris County, Texas and those certain Lots 491, 492, 493 and 494 of said Tomball Townsite, said 49.301 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap found in the Southerly line of that certain Restricted Reserve "J" of The Estates at Willow Creek, a subdivision as shown on map or plat recorded under Film Code Number 540246 of the Map Records of Harris County, Texas, for the Northeasterly comer of that certain called 2.3291 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2016-558665 and the Northerly Northwest corner of said 17.307 acre tract;

Thence, N 87° 49'3 5" E, along the Southerly line of said Restricted Reserve "I" of The Estates at Willow Creek, the Southerly line of that certain called 11.98 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number U517222 and the Southerly line of that certain Restricted Reserve "A" of Willow Creek Pet Ranch of Tomball, a subdivision as shown on map or plat recorded under Film Code Number 683259 of the Map Records of Harris County, Texas, a distance of 2,003.38 feet to the Northeasterly corner of said 31.994 acre tract;

Thence, S 03°07'21" E, along the Westerly line of that certain called 0.5045 of one acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number V343704, a distance of 232.39 feet to a 1/2 inch iron rod found in the Northwesterly line of that certain Block 2 of Country Club Greens Section Two-Replat, a subdivision as shown on map or plat recorded under Film Code Number 548068 of the Map Records of Harris County, Texas, for the Southwesterly corner of said 0.5045 acre tract;

Thence, S 42°56'22" W, along the Northwesterly line of said Block 2 of Country Club Greens Section Two-Replat, the Northwesterly line of that certain Block I of said Country Club Greens Section Two-Replat, the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat-Phase Two, a subdivision a shown on map or plat recorded under Film

Code Number 540231 of the Map Records of Harris County, Texas and the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat, a subdivision as shown on map or plat recorded under Film Code Number 519225 of the Map Records of Harris County, Texas, a distance of 1,846.30 feet to a 5/8 inch iron rod found for the Southeasterly comer of that certain called 5.3977 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P792577 and the most Southerly comer of said 31.994 acre tract;

Thence, N 13°37'50" W, along the Easterly line of said 5.3977 acre tract and the Easterly line of that certain called 5.5000 acres of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P964270, a distance of 558.86 feet to a 5/8 inch iron rod found for the Northeasterly comer of said 5.5000 acre tract and the Southeasterly corner of said 17.307 acre tract;

Thence, S 56 ° 48'54" W, along the Northerly line of said 5.5000 acre tract and the Northerly line of that certain called 1.000 acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number X5 l 7792, a distance of 423.87 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of that certain Lot 1, Block I of Huffsmith Kohrville Food Court, a subdivision as shown on map or plat recorded under Film Code Number 701507 of the Map Records of Harris County, Texas;

Thence, N 11 °23' 19" W, along the Easterly line of said Lot 1, Block I of Huffsmith Kohrville Food Court, a distance of 290.49 feet to a 5/8 inch iron rod with cap found for the Northeasterly corner of said Lot 1, Block 1 of Huffsmith Kohrville Food Court and an interior corner of said 17.307 acre tract;

Thence, S 76° 00'34" W, along the Northerly line of said Lot I, Block 1 of Huffsmith Kohrville Food Court, a distance of 412.84 feet to a 5/8 inch iron rod with cap found in the Easterly right-of-way line of Huffsmith Kohrville Road (variable width right-of-way);

Thence, along the Easterly right-of-way line of said Hufsmith Kohrville Road, the following courses and distances:

> N 20°20'37" W, a distance of 284.48 feet to a 5/8 inch iron rod found for the Southwesterly corner of that certain called 0.3634 of one acre of land dedicated for the widening of Hufsmith Kohrville Road by said map or plat of Brandt Holdings;
>
> N 87° 26'22" E, a distance of 24.68 feet to a 5/8 inch iron rod with cap found for the Southwesterly corner of said Reserve "A" of Brandt Holdings and the Southeasterly corner of said dedication;
>
> N 20' 18'43" W, a distance of 437.48 feet to a 5/8 inch iron rod with cap found for a point of curvature to the right;

In a Northwesterly direction, with said curve to the right, having a central angle of 0 l '25' 11 ", a radius of 1950.00 feet, an arc length of 48.32 feet, a chord bearing of N 19'36'08" W and

a chord distance of 48.32 feet to a 5/8 inch iron rod with cap found for the Southwesterly corner of said 2.3291 acre tract;

Thence, N 87° 37'27" E, along the Southerly line of said 2.3291 acre tract, a distance of 441.49 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of said 2.3291 acre tract;

Thence, N 02'23'19" W, along the Easterly line of said 2.3291 acre tract, a distance of 269.92 feet to the POINT OF BEGINNING and containing 49.301 acres of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983, DERIVED FROM CORS SITE RODS.

TRACT 1

0.8041 of one acre or 35,026 square feet of land situated in the Elizabeth Smith Survey, Abstract Number 70, Harris County, Texas, being a portion of that certain Unrestricted Reserve "A" of Tomball Greens, a subdivision as shown on map or plat recorded under Film Code Number 440128 of the Map Records of Harris County, Texas, said 0.8041 of one acre or 35,026 square feet of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found in the Southeasterly line of that certain called 0.1262 of one acre of land described deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number V308253, for the Northeasterly corner of that certain Lot 9, Block 2 of Country Club Greens Section Two-Replat, a subdivision as shown on map or plat recorded under Film Code Number 548068 of the Map Records of Harris County, Texas;

Thence, N 42'56'22" E, along the Southeasterly line of said 0. 1262 acre tract and the Southeasterly line of that certain called 1.879 acres of land described deed recorded in the Official Public Records of Real Prope1ty of Harris County, Texas,· under County Clerk's File Number RP-2020-279347, a distance of 163.90 feet to a 1/2 inch iron rod found for the Northwesterly corner of that certain Lot 6, Block 2 of Country Club Greens Sec. Two, a subdivision as shown on map or plat recorded under Film Code Number 491143 of the Map Records of Harris County, Texas;

Thence, S 15' 43'52" E, along the Westerly line of said Lot 6, a distance of 270.27 feet to a 1/2 inch iron rod found for the Northwesterly right-of-way line of North Country Club Green Drive (60 foot Permanent access easement), for the Southwesterly corner of said Lot 6;

Thence, S 56'26'08" W, along the Northwesterly right-of-way line of said North Country Club Green Drive, a distance of 147.07 feet to a 1/2 inch iron rod found for the Southeasterly corner of said Lot 9;

Thence, N 15'43'52" W, along the Easterly line of said Lot 9, a distance of 230.09 feet to the POINT OF BEGINNING and containing 0.8041 of one acre or 35,026 square feet of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983, DERIVED FROM CORS SITE RODS.

EXHIBIT A-2

PROPERTY DESCRIPTION

43.149 acres of land situated in the Jesse Pruitt Survey, Abstract Number 629, Harris County, Texas, being that certain called 31.994 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-170674, a portion of that certain called 17.307 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2023-171232, a portion of that certain Reserve "A" and Lot 1 of Brandt Holdings, a subdivision as shown on map or plat recorded under Film Code Number 679589 of the Map Records of Harris County, Texas, a portion of those certain Lots 489, 490, 495, 496, 497 and 498 of Tomball Townsite, a subdivision as shown on map or plat recorded under Volume 2, Page 65 of the Map Records of Harris County, Texas and those certain Lots 491, 492, 493 and 494 of said Tomball Townsite, said 43.149 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap found in the Southerly line of that certain Restricted Reserve "J" of The Estates at Willow Creek, a subdivision as shown on map or plat recorded under Film Code Number 540246 of the Map Records of Harris County, Texas, for the Northeasterly corner of that certain called 2.3291 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number RP-2016-558665 and the most Northerly Northwest corner of said 17.307 acre tract;

Thence, N 87°49'35" E, along the Southerly line of said Restricted Reserve "J" of The Estates at Willow Creek, the Southerly line of that certain called 11.98 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number U517222 and the Southerly line of that certain Restricted Reserve "A" of Willow Creek Pet Ranch of Tomball, a subdivision as shown on map or plat recorded under Film Code Number 683259 of the Map Records of Harris County, Texas, a distance of 2,003.38 feet to the Northwesterly corner of that certain called 0.5045 of one acre of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number V343704;

Thence, S 03°07'21" E, along the Westerly line of said 0.5045 acre tract, a distance of 232.39 feet to a 1/2 inch iron rod found in the Northwesterly line of that certain Block 2 of Country Club Greens Section Two Replat, a subdivision as shown on map or plat recorded under Film Code Number 548068 of the Map Records of Harris County, Texas, for the Southwesterly corner of said 0.5045 acre tract;

Thence, S 42°56'22" W, along the Northwesterly line of said Block 2 of Country Club Greens Section Two-Replat, the Northwesterly line of that certain Block 1 of said Country Club Greens Section Two-Replat, the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat-Phase Two, a subdivision a shown on map or plat recorded under Film Code Number 540231 of the Map Records of Harris County, Texas and the Northwesterly line of that certain Block 2 of Country Club Greens Partial Replat, a subdivision as shown on map or plat recorded under Film Code Number 519225 of the Map Records of Harris County, Texas, a distance of 1,846.30 feet to a 5/8 inch iron rod found for the Southeasterly corner of that certain called 5.3977 acres of land described in deed recorded in the Official

Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P792577 and the most Southerly corner of said 31.994 acre tract;

Thence, N 13°37'50" W, along the Easterly line of said 5.3977 acre tract and the Easterly line of that certain called 5.5000 acres of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number P964270, a distance of 558.86 feet to a 5/8 inch iron rod found for the Northeasterly corner of said 5.5000 acre tract and the Southeasterly corner of said 17.307 acre tract;

Thence, S 56°48'54" W, along the Northerly line of said 5.5000 acre tract and the Northerly line of that certain called 1.000 acre of land described in deed recorded in the Official Public Records of Real Property of Harris County, Texas, under County Clerk's File Number X517792, a distance of 423.87 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of that certain Lot 1 of Huffsmith Kohrville Food Court, a subdivision as shown on map or plat recorded under Film Code Number 701507 of the Map Records of Harris County, Texas;

Thence, N 11°23'19" W, along the Easterly line of said Lot 1 of Huffsmith Kohrville Food Court, a distance of 290.49 feet to a 5/8 inch iron rod with cap found for the Northeasterly corner of said Lot 1 of Huffsmith Kohrville Food Court and an interior corner of said 17.307 acre tract;

Thence, N 14°21'35" W, severing said 17.307 acre tract, a distance of 261.11 feet to a point for corner;

Thence, S 60°51'41" W, a distance of 38.37 feet to an angle point;

Thence, S 65°38'25" W, a distance of 46.09 feet to a point of curvature to the right;

Thence, in a Southwesterly direction, with said curve to the right, having a central angle of 04°19'22", a radius of 1200.00 feet, an arc length of 90.53 feet, a chord bearing of S 67°48'06" W and a chord distance of 90.51 feet to a point of tangency;

Thence, S 69°57'46" W, a distance of 219.80 feet to a point for corner;

Thence, S 24°51'39" W, a distance of 28.07 feet to the proposed Northeasterly right-of-way line of Hufsmith Kohrville Road;

Thence, N 20°18'43" W, along the proposed Northeasterly right-of-way line of Hufsmith Kohrville Road, a distance of 139.94 feet to a point for corner;

Thence, S 65°08'21" E, a distance of 28.42 feet to a point for corner;

Thence, N 69°57'46" E, a distance of 220.16 feet to a point of curvature to the left;

Thence, in a Northeasterly direction, with said curve to the left, having a central angle of 04°19'22", a radius of 1100.00 feet, an arc length of 82.99 feet, a chord bearing of N 67°48'06" E and a chord distance of 82.97 feet to a point of tangency;

Thence, N 65°38'25" E, a distance of 46.09 feet to an angle point;

Thence, N 70°25'08" E, a distance of 54.69 feet to a point for corner;

Thence, N 14°21'35" W, a distance of 293.28 feet to a point for corner;

Thence, N 70°47'20" W, a distance of 43.49 feet to a 5/8 inch iron rod with cap found for the Southeasterly corner of said 2.3291 acre tract and an interior corner of said 17.307 acre tract;

Thence, N 02°23'19" W, along the Easterly line of said 2.3291 acre tract, a distance of 269.92 feet to the POINT OF BEGINNING and containing 43.149 acres of land.

BEARING ORIENTATION BASED ON TEXAS STATE PLANE COORDINATE GRID SYSTEM OF 1983, DERIVED FROM CORS SITE RODS.

EXHIBIT B

CONCEPT PLAN/ PLANNED DEVELOPMENT

FLS Development

Planned Development Regulations

(Medical Complex Blvd & Hufsmith Kohrville Rd)

Contents

a. General Provisions

b. Land Uses

c. Development Regulations

d. Architecture Standards

e. Landscape/Buffer Regulations

f. Amenities

a. General Provisions

The Planned Development, PD, approved herein must be constructed, developed, and maintained in compliance with this ordinance and other applicable ordinances of the City of Tomball. If any provisions or regulations of any City of Tomball ordinance applicable in GR or SF-9 zoning districts is not contained in this ordinance, all of the regulations contained in the Development Code applicable to the GR and SF-9 zoning district in effect on the effective date of this ordinance shall apply to thisPD.

Except as otherwise provided herein, the words used in this Planned Development have the same meaning established by the Development Code.

b. Land Uses

Permitted Land Uses are listed below. All others are prohibited.

1) Any use permitted by right in SF-9

2) Any use permitted in the General Retail District (GR) Zoning Code of Ordinances. In addition, the following uses will not be permitted as-of-right in commercial zones:

a) All-terrain vehicle (go-carts) dealer/sales (w/no outdoor sales, storage, and display)

b) Ambulance service

c) Antique shop (with outside storage)

d) Appliance repair

e) Auction house

f) Auto dealer (new, auto servicing and used auto sales as accessory uses only, w/outdoor sales, storage, and display)

g) Auto dealer, primarily used auto sales w/outdoor sales, storage, and display

h) Auto glass repair/tinting

i) Auto interior shop/upholstery

j) Auto muffler shop

k) Auto paint shop

l) Auto parts sale (new or rebuilt; with outside storage or display)

m) Auto repair (major & minor)

n) Auto tire sales

o) Automobile wash (full service/detail shop)

p) Automobile wash (self-service)

q) Building material sales/lumber yard

r) Caretaker's, guard's residence

s) Carpet and rug cleaning plant

t) Cemetery and/or mausoleum

u) Check cashing service

v) Concrete or asphalt mixing/batching plant

w) Family home (child care in place of residence)

x) Feed and grain store/farm supply store

y) Fix-it shops, small engine, saw filing, mower sharpening

z) Fraternity or sorority house

aa) Funeral home

bb) Golf driving range

cc) Heliport/Helistop

dd) Household care institution

ee) Institution for alcoholic, narcotic, or psychiatric patients

ff) Laundromat/washateria/self- service

gg) Loan service (payday / auto title)

hh) Maintenance and repair service for buildings/janitorial

ii) Mortuary

jj) Motorcycle sales/dealer w/outdoor sales, storage, and display

kk) Office, parole-probation

ll) Pawn shop

mm) Quick lube/oil change/minor inspection

nn) Rehabilitation care facility (halfway house)

oo) School, public or denominational

pp) Sheltered care facility

qq) Taxi/limousine service

rr) Taxidermist

ss) Telemarketing agency

tt) Telephone exchange/switching station

uu) Tool and machinery rental (with outdoor storage)

vv) Welding shop

c. Development Regulations

1) Area regulations for Single Family Lots

a) Minimum Lot Size – 7,800 Feet

b) Minimum Lot Width – 60 Feet

c) Minimum Lot Depth – 120 Feet

d) Minimum Front Yard – 25 Feet (35’ adjacent to Arterial Street)

e) Minimum Side Yard – 5 Feet (15’ adjacent to street, 25’ adjacent to Arterial Street)

f) Minimum Rear Yard – 15 Feet (25’ adjacent to Arterial)

g) Maximum Lot Coverage – 55% (including main buildings and accessory buildings)

h) Maximum Height – Two stories not to exceed 35 feet for the main building/house

2) Area Regulations for nonresidential uses **(Excludes Amenities)**

a) Minimum Lot Area – 6,000 Square Feet

b) Minimum Lot Width – 60 Feet

c) Minimum Lot Depth – 100 Feet

d) Minimum Front Yard – 35 feet

e) Minimum Side Yard (Interior) – 5 Feet (25’ Adjacent to Arterial)

f) Minimum Side Yard Adjacent to Single Family – 25 Feet

g) Minimum Rear Yard – 15 Feet

h) Maximum floor area ratio (FAR) is 1:1

3) Develop full boulevard of Medical Complex Drive to serve the development (through the extent of single family residential construction) as shown in Exhibit A.

d. Architecture Standards

These recommendations and standards are meant to foster a sense of design community that will deliver the desired aesthetic of the planned residential development. The follow architectural criteria are intended to make the home builder and building designer aware of the architectural context, not to inhibit or limit unique design.

1) Building façade criteria and features:

a) Each residence must present an exterior design within the classification of “Modern Farmhouse”

or “Craftsman” design.

b) Combined exterior materials and colors must vary from those within 4 residences of the subject. Crossing the street will count as one residence.

c) Primary brick material may not be repeated within 4 residences.

d) A variation of garage entries and garage sizes is expected as a general method of breaking up the street scene for the subdivision. This will include front loading 2 and 3 car garages as well as “J-Swing” garage entries.

2) Building façade finishes and materials:

a) Each residence must include the following materials in varied methods of use.

b) Brick and/or Stone.

c) Board and Batten siding or similar painted material.

d) Cedar or other stained or painted decorative wood detailing.

e) Minimum 8:12 Side to side roof pitch.

e. Landscape/Buffer Regulations

1) Single Family Lot Requirements

a) Each lot shall be fully landscaped with either trees, plants or otherwise coved with grass.

b) Each lot shall have at least one 3.5” caliper shade tree planted in the front yard.

c) See attached (Exhibit B) for landscaping guidelines.

2) Non-residential Requirements

a) Provide 30’ landscape buffer and tree preservation between commercial reserve tracts and single family lots.

b) Common areas near community signage, amenities, and within the esplanade for Medical Complex will be consistently landscaped with seasonal vegetation and flowers.

3) The community park, fishing dock and shade structure shall be maintained with irrigated grass and seasonal landscaping.

f. Amenities

Amenities will be designed and built to complement the overall concept of the community with a similar use of

materials and design concepts related to the home design requirements for the subdivision. When completed, the combination of the architectural design of the

Amenities, the consistent branding of each area, and the complimentary design of the commercial section of the community will complete a destination environment combining a modern design with a nod to the history of Tomball.

The following Amenities are required as shown on Exhibit A.

1) Up to two (2) Wet amenity detention ponds with fountains.

2) Designated walking trails around amenity ponds (w/ workout equipment).

3) Playground structure.

4) Fishing Dock.

5) Shade structure.

6) Up to two (2) monument signs within platted area.

7) Two (2) Pickle ball courts with fence and seating and up to 5 designated head-in parking spaces

Planned Development EXHIBIT B

Landscaping Guidelines

Just as all structures built throughout Graylou Grove from commercial to residences to amenity structures will be required to include design elements consistent with one another, landscaping in all of these areas will be expected to create a consistent and beautiful vegetation concept throughout the development.

A focus will be made on trees, plants and flowers which are native to the area and the State of Texas in general. Trees planted will be Oaks, implementation of plants will have a focus on evergreen selections and color will be provided by plants and flowers which do well in the environment and seasonal use of their intent.

All areas landscaped as part of the development will remain on an ongoing maintenance plan including irrigation and landscaping maintenance workers who will perform work on a regular basis.

Treelines:

Areas designated as treelines will be completed with selected Oaks of 6" in diameter or greater.

Common Areas:

Common areas in the development will include areas around signage, inside medians of Medical Complex, and throughout the amenity area at east end of the community.

These areas will require coverage by landscaping. Medians will be presented with a combination of mulch, St Augustine Grass, Evergreen plants and seasonal plants and flowers. These areas will be maintained through irrigation and ongoing care through landscaping professionals.

Areas immediately surrounding amenities or signage will be maintained with a combination of St. Augustine grass, mulch, evergreen plants and seasonal color.

Smaller, more detailed areas that require grass will be completed with the laying of sod while larger open areas will be completed through the use of grass seed.

Residential Requirements:

In order to be considered complete per community guidelines, each residence must include at least one 3.5 caliper tree of Oak or other approve tree, a fully sodded and irrigated front yard (to front corner of home at a minimum) and a landscaping area which must be a minimum of 5' x 20' in size. Landscaped should include a combination of mulch beds, evergreen plants and seasonal plants with color or seasonal flowers.

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.

Description		WSD	Roadway	Out-of-Distrcit	Total
B1. General & Site Preparation Items		$ 496,180	$ -	$ -	$ 496,180
B2. SWPPP Items		$ 194,081	$ 194,081	$ 2,910	$ 391,072
B3. Water Distribution Items		$ 781,915	$ -	$ -	$ 781,915
B4. Wastewater Collection Items		$ 552,860	$ -	$ -	$ 552,860
B5. Stormwater Collection Items		$ 1,480,189	$ -	$ 12,536	$ 1,492,725
B6. Natural Gas Distribution Items		$ 189,635	$ -	$ -	$ 189,635
B7. Excavation and Paving Items		$ -	$ 2,822,700	$ 129,595	$ 2,952,295
B7. Traffic and Traffic Control Items		$ -	$ 80,000	$ -	$ 80,000
C. Extra Unit Price Items		$ 106,900	$ -	$ -	$ 106,900
D. Cash Allowances		$ 125,000	$ 535,000	$ 130,000	$ 790,000
Subtotal		$ 3,926,759	$ 3,631,781	$ 275,042	$ 7,833,582
Construction Staking (1.5%)		$ 58,901	$ 54,477	$ 4,126	$ 117,504
City of Tomball Construction Permit Fee (2%)		$ 78,535	$ 72,636	$ 5,501	$ 156,672
Certification of Insurance, Performance, Payment and Maintenance Bonds (2%)		$ 80,000	$ 74,000	$ 6,000	$ 160,000
Contigency (5%)		$ 207,210	$ 191,645	$ 14,533	$ 413,388
Sub-Total Construction Cost		**$ 4,133,969**	**$ 3,823,426**	**$ 289,575**	**$ 8,681,145**
Drainage Impact Fee		$ -	$ -	$ -	$ -
Engineering Fees (8%)		$ 330,718	$ 305,874	$ 23,166	$ 659,758
Geotechnical Eng. & Construction Material Testing (2%)		$ 82,679	$ 76,469	$ 5,792	$ 164,939
Sub-Total Engineering and Fees		**$ 413,397**	**$ 382,343**	**$ 28,958**	**$ 824,697**
Total Preliminary Construction Cost Estimate		**$ 4,547,366**	**$ 4,205,768**	**$ 318,533**	**$ 9,505,842**
Cost per Lot	87	$ 52,269	$ 48,342	-	$ 109,263
Cost per Acre	47.9	$ 94,956	$ 87,823	-	$ 198,496

Notes

1 Estimate does not include any additional costs that may be required for development outside the scope outlined above. These fees may include street lighting, dry utilities, etc.

2 The quantities reflected on this estimate were tabulated from 30% preliminary engineering drawings. The unit prices shown hereon are based on current bid prices received in this office, are valid for 30 days from tabulation, and are subject to change pending approved construction plans and market conditions.

Exhibit D

EXHIBIT D

[RESERVED]

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 _____, 20__, including the Service and Assessment Plan and Assessment Rolls attached thereto (the "Assessment Ordinance"). [TO BE EXECUTED PRIOR TO THE LEVY OF ASSESSMENTS]

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 _____, 20__.

_____, LLC,
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, an _____ limited liability company 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 Tomball, Texas, Special Assessment Revenue Bonds, Series 20__ (Graylou Grove Public Improvement District Project)" (the "Bonds"). FLS Development, LLC a Texas limited liability company (the "Developer") 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 Graylou Grove 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. In addition, the Developer must complete and submit any requirement information requested by the City's PID Administrator.

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 FLS Development, LLC (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 Graylou Grove 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.

The Developer must also submit any requirement information requested by the City's PID Administrator.

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 perform the following with respect to disclosure to homebuyers in the PID and if lots are sold to third-party builders, shall require in its contracts with such builders within the PID that the builders provide notice to prospective homebuyers in accordance with the following minimum requirements:

2. Attach 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 colored paper.

3. Collect a copy of the addendum signed by each buyer at closing and record it in the real property records of Harris County.

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

AMENITIES

- Wet amenity detention pond with fountains
- Designated walking trails around amenity ponds (w/ workout equipment)
- Playground structure
- Fishing Dock
- Shade structure
- Up to two (2) monument signs within platted area
- Two (2) Pickle ball courts with fence and seating.