Life Connected.

CITY COUNCIL REGULAR MEETING
CELINA COUNCIL CHAMBERS
112 N. COLORADO ST.
TUESDAY, APRIL 11, 2023
5:00 PM
AGENDA

I. CALL TO ORDER AND ANNOUNCE A QUORUM PRESENT:

II. PLEDGE OF ALLEGIANCE/INVOCATION:

III. PROCLAMATIONS/PRESENTATIONS/OATHS OF OFFICE:

IV. WORKSESSION/COMMITTEE REPORTS/STAFF REPORTS:

V. EXECUTIVE SESSION:

As authorized by Section 551.071(2) of the Texas Government Code, this meeting may be convened into closed executive session for the purpose of seeking confidential legal advice from the city attorney on any agenda item listed herein.

A. discussion regarding...

VI. CONSENT AGENDA:

Items are considered self-explanatory and will be enacted with one motion. No separate discussion of these items will occur unless so requested by at least one member of the City Council.

A. Minutes Approval:

VII. PUBLIC HEARING/ACTION:

A. consider and act...

VIII. ACTION ITEM:

IX. **ADJOURNMENT:**

City Council Chambers is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf, or hearing impaired, or readers of large print, are requested to contact the City Secretary's Office at 972-382-2682, or fax 972-382-3736 at least two (2) working days prior to the meeting so that appropriate arrangements can be made.

The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code, Chapter 551. "I, the undersigned authority do hereby certify that the Notice of Meeting was posted on the bulletin board at City Hall of the City of Celina, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time: November 3, 2022 at 5:00 p.m. and remained so posted continuously for at least 72 hours prior to the scheduled time of said meeting."

Lauren Field, TRMC
City Secretary

Date Notice Removed

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Development Services
City of Celina, Texas

Memorandum

To: **Honorable Mayor Terry and the Celina City Council**
From: Kari White, Senior Planner
CC: Jason Laumer, City Manager
Date: April 11, 2023
Re: consider and act...

Action Requested:
consider and act....

Background Information:
bid approval for....

Supporting Documents:
1. Development Agreement

Staff Recommendation:
staff recommends approval

Denton County
Juli Luke
County Clerk

Instrument Number: 14545

ERecordings-RP

AGREEMENT

Recorded On: February 16, 2023 02:16 PM | Number of Pages: 33

" Examined and Charged as Follows: "

Total Recording: $154.00

************ **THIS PAGE IS PART OF THE INSTRUMENT** ************

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	14545
Receipt Number:	20230216000458
Recorded Date/Time:	February 16, 2023 02:16 PM
User:	Kraig T
Station:	Station 21

Record and Return To:

Corporation Service Company

STATE OF TEXAS
COUNTY OF DENTON

I hereby certify that this Instrument was FILED **In the File Number sequence on the date/time printed hereon, and was duly** RECORDED **in the Official Records of Denton County, Texas.**

Juli Luke
County Clerk
Denton County, TX

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into by and between DFW Land, LLC (together, the "Developer") and the City of Celina (the "City"), to be effective on the date upon which the last of all of the Parties has approved and duly executed this Agreement ("Effective Date").

RECITALS

WHEREAS, certain capitalized terms used herein are defined in Article I; and

WHEREAS, the City is a home-rule municipality of the State of Texas located within Denton County and Collin County; and

WHEREAS, the Developer and the City (which are sometimes individually referred to as a "Party" and collectively as the "Parties") desire to enter into this Agreement; and

WHEREAS, on the date the City Council voted to approve this Agreement, Developer was under contract to purchase from Sorrells, LLC and Punkadilly, LTD (the "Owner"), approximately 386.212 acres of land, generally located east of the intersection of FM 1385 and FM 428, which lies within the extraterritorial jurisdiction ("ETJ") of the City, and within Denton County, Texas and is described by metes and bounds on **Exhibit A** and depicted in **Exhibit B** (the "Property"); and

WHEREAS, the Developer intends to purchase the Property and the Developer intends to develop the Property pursuant to the terms of this Agreement; and

WHEREAS, the Developer intends to develop the Property as a planned development with residential and commercial uses (the "Development"); and

WHEREAS, the Parties intend for this Agreement to establish certain restrictions and to impose certain commitments in connection with the development of the Property; and

WHEREAS, the Parties intend for the Property to be developed in a manner consistent with the City's zoning requirements, building material requirements and building code requirements, except as otherwise provided herein; and

WHEREAS, the Parties intend that the Property will be developed in accordance with the concept plan attached hereto as **Exhibit C** (the "Concept Plan"), the development standards attached hereto as **Exhibit D** (the "Development Standards"); and

WHEREAS, the Developer intends to construct and/or make financial contributions to certain onsite and/or offsite public improvements to serve the Development; and

WHEREAS, in consideration of the Developer's agreements contained herein to develop the Property as envisioned by the Parties, and to incentivize the development of the Property, the City has agreed to reduce the capital recovery fees for the development of the Property as specifically set forth in this Agreement; and

WHEREAS, the Mustang Special Utility District holds the certificates of convenience and necessity (the "CCNs") to provide retail water and wastewater service to the Property, and the Parties intend for Mustang Special Utility District to provide retail water and wastewater service to the Property; and

WHEREAS, subject to any cost participation undertaken by the City for oversizing water or wastewater facilities inside the Property to serve surrounding properties, the Development will require Developer to build certain onsite infrastructure, including streets and roads; drainage; water, sanitary sewer, and other utility systems; parks, open space, landscaping, and trail systems; and dedicate land for all of the onsite public improvements (collectively, "Onsite Public Improvements" and together with the Roadway Improvements, Wastewater Improvements, and Water Improvements (the "Public Infrastructure"); and

WHEREAS, the City has determined that full development of the Property as provided herein will promote local economic development within the City and will stimulate business and commercial activity within the City, which will drive infrastructure investment and job creation, and have a multiplier effect that increases both the City's tax base and utility revenues; and

WHEREAS, the Parties have determined that the Development will increase the quality of housing within the City; and

WHEREAS, on February 12, 2019, the City Council adopted Resolution No. 2019-11R (the "Resolution") consenting to the creation of the Station Municipal Management District of Collin County, a 324.64-acre district encompassing all of the Property, by special act of the 86th Texas Legislature (the "MMD") as described in the draft legislation attached to the Resolution and filed as HB 3436 ("MMD Legislation"), and Developer has agreed to change the MMD's name; and

WHEREAS, the Parties desire for a Public Improvement District (a "PID"), described in Chapter 372, Texas Local Government Code, as amended, entitled the "Public Improvement District Assessment Act" (the "PID Act"), as amended, or the MMD to be utilized to aid in the development of the Property, pursuant to the terms of this Agreement and the PID and MMD creation documents, as applicable; and

WHEREAS, the Developer plans to develop the Property upon the execution of this Agreement and subsequent issuance of MMD Bonds by the MMD or PID Bonds by the City for the payment of certain costs for the construction and acquisition of certain Public Infrastructure to benefit the Property, and for the repayment to Developer for certain costs advanced for the construction and acquisition of certain Public Infrastructure to benefit the Property as set forth in the PID Service and Assessment Plan or MMD reimbursement agreement; and

WHEREAS, the City and the Developer agree that the Development can best proceed pursuant to a development agreement such as this Agreement; and

WHEREAS, the Parties have the authority to enter into this Agreement pursuant to Section 212.171 *et seq* of the Texas Local Government Code and other applicable law; and

WHEREAS, the Parties contemplate that Developer execute and return a petition satisfying all legal requisites for annexation of the Property under Subchapter C-4 of Texas Local Government Code, Chapter 43, as forth in Article VI below.

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

ARTICLE I
GENERAL TERMS AND DEFINITIONS

1.1 Definitions. Unless the context requires otherwise, the following terms shall have the meanings hereinafter set forth:

Agreement is defined in the introductory paragraph.

Bank Qualified Debt Fee is defined in Section 7.4(a).

CCNs mean certificates of convenience and necessity.

City is defined in the introductory paragraph.

City Assignee is defined in Section 9.2.

City Council means the city council of the City.

City Regulation(s) means any ordinance, rule, regulation, standard, policy, order, guideline, master plans, or other City-adopted or City-enforced requirement, as amended and adopted by the City for uniform application throughout the corporate limits, and as are applicable to the Development.

Claims is defined in Section 4.2(a).

Concept Plan means the concept plan as shown in **Exhibit C**, as amended in accordance with this Agreement.

Developer is defined in the introductory paragraph.

Developer Assignee is defined in Section 9.1(a).

Development is defined in the Recitals.

Development Standards means the development standards for the Property, which are set forth on **Exhibit D**.

Effective Date is the date in the introductory paragraph.

Eminent Domain Fees is defined in Section 2.3.

End-Buyer is defined in Section 10.1.

ETJ is defined in the Recitals.

Indemnified Party is defined in Section 4.2(a).

MMD has the meaning set forth in the Recitals.

MMD Bonds has the meaning set forth in Section 7.3(b).

MMD Legislation has the meaning set forth in the Recitals.

Mustang SUD means Mustang Special Utility District.

Neighborhood Vision Book means the guide regarding open space and outdoor amenities adopted by City Resolution No. 2020-79R, as it may be subsequently amended.

Onsite Public Improvements is defined in the Recitals.

Owner is defined in the Recitals.

Parties means the Developer and the City.

Party means the Developer or the City.

Petition Property is defined in Section 6.1.

PID means a public improvement district created by the City for the benefit of the Property pursuant to the PID Act.

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

PID Projects is defined in Section 7.2(a)(3).

PID Project Costs is defined in Section 7.2(a)(4).

Property is defined in the Recitals.

Public Infrastructure means water, wastewater, drainage, roadway, and other public infrastructure necessary to serve the full development of the Property, including the Onsite Public Improvements and the Roadway Improvements.

Resolution has the meaning set forth in the Recitals.

Service and Assessment Plan means, with respect to any PID, the PID Service and Assessment Plan, to be adopted, updated or amended annually, if needed, by the City Council pursuant to the PID Act for the purpose of assessing allocated costs against property located within the boundaries of the PID(s) having terms, provisions and findings approved by the City, as required by this Agreement.

Roadway Improvements is defined in Section 2.1(c) and depicted in **Exhibit E**.

Water Improvements is defined in Section 2.1(d).

Wastewater Improvements is defined in Section 2.1(e).

ARTICLE II
PUBLIC INFRASTRUCTURE

2.1 Public Infrastructure.

(a) Standards. Except as otherwise expressly provided for in this Agreement, all Public Infrastructure shall be designed, constructed, and installed by the Developer in compliance with the City Regulations. Construction and/or installation of Public Infrastructure shall not begin until complete and accurate plans and specifications have been approved by the City. Each contract for construction of Public Infrastructure shall require a two-year maintenance bond following completion of such Public Infrastructure, which bond shall run in favor of the Party responsible for maintenance of the completed Public Infrastructure. To the extent easements or rights-of-way are needed within the Property and/or on the perimeter of the Property, they shall be dedicated by the Developer to the City at no cost to the City. The Public Infrastructure will be installed within easements granted to the City or in the public right-of-way, however utilities must be in an easement separate from the right-of-way. The size of the Public Infrastructure shall be as finally determined by the City's engineer, however, should the City's engineer determine oversizing is needed to serve property other than the Development, then the City shall pay its proportionate share of such oversizing costs as they become due and payable under the construction contract.

(b) ROW Dedication. The Developer shall, either by plat or by deed as requested by the City, dedicate the right-of-way for thoroughfares, roads, streets, and alleys.

(c) Roadway Improvements by Developer. As required by the City Regulations and as depicted on **Exhibit E**, Developer shall, as its sole cost and expense, design and construct the following at no cost to the City (the "Roadway Improvements"):

(1) All roadway Onsite Public Improvements required by the City Regulations and needed to serve the Development; and

(2) The roadway improvements designated for construction by Developer on **Exhibit E**.

(d) Water Improvements by Developer. As required by the City Regulations, Developer shall, as its sole cost and expense, design and construct, at no cost to the City or Mustang SUD all water Onsite Public Improvements required by the City Regulations and Mustang SUD that are needed to serve the Development (the "Water Improvements").

(e) Wastewater Improvements by Developer. As required by the City Regulations, Developer shall, as its sole cost and expense, design and construct the following at no cost to the City or Mustang SUD all wastewater Onsite Public Improvements required by the City Regulations and Mustang SUD that are needed to serve the Development (the "Wastewater Improvements").

2.2 Inspections, Acceptance of Public Infrastructure.

(a) Roadway and Storm Infrastructure. The City shall have the right to inspect, at any time, the construction of all roadway and storm water Public Infrastructure, and any related Public Infrastructure necessary to support the proposed development within the Property, which shall be inspected, designed, and constructed in compliance with all statutory and regulatory requirements, including design and construction criteria, and the City Regulations.

(b) Water and Wastewater Infrastructure. The City and Mustang SUD shall have the right to inspect the construction of all water and wastewater Public Infrastructure at any time, which water and wastewater shall be inspected, designed, and constructed in compliance with all statutory and regulatory requirements, including design and construction criteria, and the City Regulations. The timing of construction of the various components of the water and wastewater Public Infrastructure shall be as required by the applicable City Regulations and Mustang SUD regulations.

(c) No Release. The City's inspections shall not release the Developer from its responsibility to construct, or ensure the construction of, adequate Public Infrastructure in accordance with approved engineering plans, construction plans, and other approved plans related to the Development provided the City satisfies its obligations under this Agreement.

(d) City Owned/Mustang SUD Owned. From and after the inspection and acceptance by the City and Mustang SUD of their respective Public Infrastructure and any other dedications required under this Agreement, such improvements and dedications shall be owned by the City or Mustang SUD, respectively.

(e) Approval of Plats/Plans. Approval of plats, permits, plans, designs, or specifications by the City shall be in accordance with the City Regulations. Approval by the City, the City's engineer or other City employee or representative of any plats, permits, plans, designs or specifications submitted pursuant to this Agreement or pursuant to the City Regulations shall not constitute or be deemed to be a release of the responsibility and liability of the Developer, his engineer, employees, officers, or agents for the accuracy and competency of their design and specifications. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by the Developer or the Developer's engineer, or engineer's officers, agents, servants, or employees, it being the intent of the parties that approval by the City's engineer signifies the City's approval on only the general design concept of the improvements to be constructed. All plats and plans of the Developer related to the Property shall meet the requirements of the applicable City Regulations. Plans and approvals required by Mustang SUD for Water Improvements and Wastewater Improvements shall be submitted and reviewed by Mustang SUD as required by Mustang SUD's regulations.

2.3 Eminent Domain. The Developer agrees to use commercially reasonable efforts to obtain all third-party rights-of-way, consents, or easements, if any, required for the Public Infrastructure. If, however, the Developer is unable to obtain such third-party rights-of-way, consents, or easements within ninety (90) days of the Effective Date for the Public Infrastructure, except for Water Improvements and Wastewater Improvements,, the City agrees to take reasonable steps to secure same (subject to City Council authorization after a finding of public necessity) through the use of the City's power of eminent domain. The 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 (collectively, "Eminent Domain Fees") paid or incurred by the City in the exercise of its eminent domain powers and shall, if requested in writing by the City, escrow with a mutually agreed upon escrow agent the City's reasonably estimated Eminent Domain Fees both in advance of the initiations of each eminent domain proceeding and as funds are needed by the City. Provided that the escrow fund remains appropriately funded in accordance with this Agreement, the City will use all reasonable efforts to expedite such condemnation procedures so that the Public Infrastructure can be constructed as soon as reasonably practicable. If the City's Eminent Domain Fees exceed the amount of funds escrowed in accordance with this paragraph, the Developer shall deposit additional funds as requested by the City into the escrow account within ten (10) days after written notice from the City. City is not required to continue pursuing the eminent domain unless and until the Developer deposits addition Eminent Domain Fees with the City. Any unused escrow funds will be refunded to the Developer with thirty (30) days after any condemnation award or settlement becomes final and non-appealable. Nothing in this subsection is intended to constitute a delegation of the police powers or governmental authority of the City, and the City reserves the right, at all times, to control its proceedings in eminent domain.

2.4 Operation and Maintenance.

(a) Upon inspection, approval, and acceptance of the Water Improvements and Wastewater Improvements or any portion thereof, Developer shall dedicate such improvements to Mustang SUD to maintain and operate the accepted Water Improvements and Wastewater Improvements, or any accepted portion thereof, for purposes of providing water and wastewater service to the Property.

(b) Upon inspection, approval, and acceptance of the roadway and storm water Public Infrastructure or any portion thereof, the City shall maintain and operate the roadways and storm water infrastructure or any accepted portion thereof.

(c) Maintenance and operation of open spaces, trails, common areas, right-of-way irrigation systems, right-of-way landscaping, screening walls, detention ponds and any other common improvements or appurtenances is addressed in the Development Standards, and to the extent not addressed shall be maintained and operated by a homeowner's association in accordance with the City Regulations.

ARTICLE III
DEVELOPMENT REGULATIONS

3.1 Full Compliance with City Standards.

(a) Development of the Property shall be subject to the applicable City Regulations.

(b) The Parties agree the Concept Plan was created by the Developer for illustrating the boundary, lot mix and general layout of the Development. Any amendment to the Concept Plan shall be considered an amendment to this Agreement and shall replace the attached Concept

Plan and become a part of this Agreement. The City Manager of the City may administratively approve any amendments to the Concept Plan that the City Manager deems in his reasonable discretion to be minor in nature. If the City Manager deems an amendment to not be minor in nature, the Concept Plan may be amended as set forth in the City Regulations.

3.2 Plat. The Developer may submit a plat for all or any portion of the Property. Any plat shall be in general conformance with the Concept Plan, including any amendments. The processing and content of all plats must adhere to the City Regulations, as they may be expressly altered by this Agreement.

3.3 Vested Rights. This Agreement shall constitute a "permit" under Chapter 245 of the Texas Local Government Code that is deemed filed with the City on the date upon which the last of all of the Parties has approved and duly executed this Agreement. The Developer does not, by entering into this Agreement, waive any rights or obligations arising under Chapter 245 of the Texas Local Government Code. Upon an administratively complete application for a final plat for any portion of the Property, Developer may claim vested rights as to the portion of the Property contained in the final plat based upon ordinances in effect at the time of final plat application, except to the extent such claim would cause the City's building material regulations in the zoning ordinance or in other City ordinances to be inapplicable.

3.4 Building Codes, Fire Codes and Building Materials. *As consideration for the capital recovery fees being reduced and impact fees being waived for the Property, Developer has consented to and requested, and the Parties agree, that **Exhibit D**, the City-adopted building codes and local amendments as subsequently amended, the City-adopted fire codes and local amendments as subsequently amended, and the City's building material regulations contained in the zoning ordinance and in other City ordinances, all as subsequently amended, to apply to the Property, and voluntarily agrees to burden the Property with their applicability, despite Texas Government Code Chapter 3000, effective September 1, 2019, as it presently exists or may be subsequently amended. The Parties further acknowledge and agree that the terms, provisions, covenants, and agreements contained in, or referenced in, this paragraph are covenants that touch and concern the Property and that it is the intent of the Parties that such terms, provisions, covenants, and agreements shall run with the Property and shall be binding upon the Parties hereto, their successors and assigns, and all subsequent owners of the Property. Should any amendment to the building material regulations contained in the zoning ordinance and in other city ordinances be held to be invalid by a court of competent jurisdiction, the Parties agree that the building material regulations in effect on August 1, 2019 shall then touch and concern the Property and be binding upon the Property.*

3.5 Internet and Gas Lines. Simultaneously with the construction of water Public Infrastructure, the Developer shall install within public rights-of-way or public easements high-speed internet infrastructure (either fiber or a future technology approved by the City) and gas lines to the perimeter of each lot. The high-speed internet infrastructure/fiber and gas lines shall be adequately sized to serve the intended use of the lot, with the high-speed internet infrastructure/fiber being capable of transmitting high-speed internet of at least 1 gig per second. Once installed, the Developer shall have no obligation to own, maintain or upgrade such high-speed internet infrastructure or gas lines.

3.6 Amenity Centers. Developer shall construct the amenity center(s) described on **Exhibit D.** Completion of the amenity center by Developer shall be evidenced by a certificate of occupancy from the City. Construction of the first amenity center shall commence prior to the issuance of the 100th building permit for a single-family home within the Development.

3.7 Dedications for Open Space, and Schools.

(a) Open space areas shall be maintained by a homeowners' association, but shall be open to the public (excluding amenity centers, which shall be private). The amount and design of open space shall be in conformance with the City's Neighborhood Vision Book.

(b) One site for elementary school shall be reserved by the Developer. Site shall be at least 10-12 acres in size. The site may be dedicated or sold to the school district at the Developer's acquisition cost by separate agreement between the school district and the Developer.

3.8 MMD Name. Developer agrees to cause the MMD to change its name so that the name does not contain the word "Celina" within six (6) months of closing on the Property, if not already done.

ARTICLE IV
DEVELOPMENT PROCESS AND CHARGES

4.1 Capital Recovery Fees.

(a) Residential Fees Altered. Except as specifically described below, the Property shall be subject to those fees and charges due and payable to the City in connection with the Development that are charged pursuant to City Regulations to other developments located in the corporate limits of the City. Notwithstanding the foregoing, no capital recovery fees, including, but not limited to, pro rata fees, impact fees for water, sewer and roadways and other capital recovery fees, shall be charged by the City for single-family development against the Property other than: (i) park fees in the amount of $1,500 per residential dwelling unit; (ii) technology fees in the amount of $500 per residential dwelling unit; and (iii) roadway capital fees of $3,000 per residential dwelling unit. Roadway capital fees shall escalate by an additional $500 per residential dwelling unit upon reaching the five-year anniversary of the Effective Date, and again upon each succeeding five-year intervals for the term of the Agreement. All capital recovery fees applicable to individual lots will be due and payable at the time building permits are issued for each lot.

(b) Commercial and Multifamily Fees. The Property will be subject to those fees and charges that are applicable at the time of building permit for the commercial and multifamily portions of the Development that are charged pursuant to City Regulations and Mustang SUD regulations.

(c) Park Fees in Lieu of Dedication. Park fees in lieu of dedication shall be paid at time of platting.

(d) Tree Mitigation Fees. Tree mitigation fees shall be in the amounts required by the City Regulations.

(e) Emergency Sirens. In consideration for the City's assistance and cooperation in connection with the issuance by the City of PID Bonds for any part of the Development and/or consent to the MMD, the Developer agrees to pay the City, simultaneously with the City's acceptance of the second phase subdivision, a fee in the amount of $75,000 to be used by the City to purchase and install one emergency warning siren.

4.2 INDEMNIFICATION AND HOLD HARMLESS.

(a) THE DEVELOPER AND ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES AND AGENTS (EACH AN "INDEMNIFIED PARTY"), FROM AND AGAINST ALL ACTIONS, DAMAGES, CLAIMS, LOSSES OR EXPENSE OF EVERY TYPE AND DESCRIPTION TO WHICH THEY MAY BE SUBJECTED OR PUT: (I) BY REASON OF, OR RESULTING FROM THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE DEVELOPER; (II) THE NEGLIGENT DESIGN, ENGINEERING AND/OR CONSTRUCTION BY THE DEVELOPER OR ANY ARCHITECT, ENGINEER OR CONTRACTOR HIRED BY THE DEVELOPER OF ANY OF THE PUBLIC INFRASTRUCTURE ACQUIRED FROM THE DEVELOPER HEREUNDER; (III) THE DEVELOPER'S NONPAYMENT UNDER CONTRACTS BETWEEN THE DEVELOPER AND ITS CONSULTANTS, ENGINEERS, ADVISORS, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS IN THE PROVISION AND/OR CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE; (IV) ANY CLAIMS OF PERSONS EMPLOYED BY THE DEVELOPER OR ITS AGENTS TO CONSTRUCT THE PUBLIC INFRASTRUCTURE; OR (V) ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, AND/OR TRUSTEES, REGARDING OR RELATED TO THE PUBLIC INFRASTRUCTURE OR ANY AGREEMENT OR RESPONSIBILITY REGARDING THE PUBLIC INFRASTRUCTURE, INCLUDING CLAIMS AND CAUSES OF ACTION WHICH MAY ARISE OUT OF THE PARTIAL NEGLIGENCE OF AN INDEMNIFIED PARTY (THE "CLAIMS"). NOTWITHSTANDING THE FOREGOING, NO INDEMNIFICATION IS GIVEN HEREUNDER FOR ANY ACTION, DAMAGE, CLAIM, LOSS OR EXPENSE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE DIRECTLY ATTRIBUTABLE TO THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF ANY INDEMNIFIED PARTY. DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER IN PROVIDING SUCH DEFENSE.

(b) **IN ITS REASONABLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY DEVELOPER IN FULFILLING ITS OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. THE INDEMNIFIED PARTIES RESERVE THE RIGHT TO PROVIDE A PORTION OR ALL OF THEIR/ITS OWN DEFENSE, AT THEIR/ITS SOLE COST; HOWEVER, INDEMNIFIED PARTIES ARE UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY AN INDEMNIFIED PARTY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND INDEMNIFIED PARTIES OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY INDEMNIFIED PARTIES PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN BUSINESS DAYS OF WRITTEN NOTICE FROM AN INDEMNIFIED PARTY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON THEIR OWN BEHALF, AND DEVELOPER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY**

INDEMNIFIED PARTIES. THE CITY AGREES, UNLESS ADVISED BY DEFENSE COUNSEL TO THE CONTRARY, TO ASSERT ITS IMMUNITY FROM LIABILITY AND IMMUNITY FROM SUIT AND/OR OTHER AVAILABLE AFFIRMATIVE DEFENSES

(c) THIS SECTION 4.2 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

(d) **THE PARTIES AGREE AND STIPULATE THAT THIS INDEMNIFICATION AND THE EXPRESS NEGLIGENCE TEXT COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT, AND IS VALID AND ENFORCEABLE AGAINST THE DEVELOPER.**

4.3 <u>THE DEVELOPER'S ACKNOWLEDGEMENT OF THE CITY'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/DEVELOPERS' WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT</u>.

(a) **THE DEVELOPER ACKNOWLEDGES AND AGREES THAT, PROVIDED THERE ARE NO CITY DEFAULTS UNDER THIS AGREEMENT:**

(I) **THE PUBLIC INFRASTRUCTURE EXPRESSLY SET FORTH IN THIS AGREEMENT TO BE CONSTRUCTED UNDER THIS AGREEMENT, AND THE FEES TO BE IMPOSED BY THE CITY PURSUANT TO THIS AGREEMENT, REGARDING THE PROPERTY, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:**

(A) **TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**

(B) **VIOLATION OF THE TEXAS LOCAL GOVERNMENT CODE, AS IT EXISTS OR MAY BE AMENDED; AND/OR**

(C) **NUISANCE.**

(II) **THE AMOUNT OF THE DEVELOPER'S FINANCIAL AND INFRASTRUCTURE CONTRIBUTION FOR THE PUBLIC INFRASTRUCTURE EXPRESSLY SET FORTH IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT THE DEVELOPER'S ANTICIPATED IMPROVEMENTS AND DEVELOPER'S DEVELOPMENT OF THE PROPERTY PLACES ON THE CITY'S INFRASTRUCTURE.**

(III) **THE DEVELOPER HEREBY AGREES, STIPULATES AND ACKNOWLEDGES THAT: (A) ANY PROPERTY WHICH IT CONVEYS TO THE CITY OR ACQUIRES FOR THE CITY PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY THE DEVELOPER FOR SUCH LAND, AND THE DEVELOPER HEREBY WAIVES ANY CLAIM THEREFOR THAT IT MAY HAVE; AND (B) ALL PREREQUISITES TO SUCH DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND ANY VALUE RECEIVED BY THE CITY RELATIVE TO SAID CONVEYANCE IS RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF THE PROPERTY ON THE CITY'S INFRASTRUCTURE. THE DEVELOPER FURTHER AGREES TO WAIVE AND RELEASE ALL CLAIMS IT MAY HAVE AGAINST THE CITY UNDER THIS AGREEMENT RELATED TO ANY AND ALL: (A) CLAIMS OR CAUSES OF ACTION BASED ON ILLEGAL OR EXCESSIVE EXACTIONS; AND (B) ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS**

MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.

(b) THIS SECTION 4.3 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE V
TERM

The term of this Agreement shall be for a period of twenty (20) years after the Effective Date, except that Section 3.4, plus all provisions referenced in Section 3.4, of this Agreement are covenants that touch and concern the Property and shall run with the Property following the termination of this Agreement. The Parties may extend the term of this Agreement if they execute an agreement in writing. Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate, be *void ab initio* and shall be of no further force or effect if the Developer does not purchase the Property by December 31, 2023 or if Developer notifies the City in writing prior to December 31, 2023 that it will not purchase the Property.

ARTICLE VI
ANNEXATION AND POST-ANNEXATION MATTERS

6.1 Annexation. Within thirty (30) days of being requested to do so by the City, Developer agrees to (a) submit a voluntary annexation petition for the Property, or (b) if requested by the City, sign a petition for annexation presented to Developer by the City that may contain additional acres (collectively, the "Petition Property"). Developer agrees to execute and supply any and all instruments and/or other documentation necessary for the City to annex the Property into the City's corporate limits. This Agreement constitutes the service plan agreement for providing City services to the Property. If the City is unable to complete the annexation of the Petition Property for any reason, including but not limited to procedural error or legal challenge, Developer shall execute another voluntary annexation petition for the Petition Property and/or Property, within ten (10) days of being requested to do so. Developer acknowledges and agrees that:

(a) this Section 6.1 was a material inducement for the City to enter into this Agreement with Developer and to create a PID;

(b) Developer is not required to enter into this Agreement;

(c) the annexation procedures described in this Agreement require Developer's consent, and by entering into this Agreement, Developer hereby voluntarily provides such consent; and

(d) with this Agreement and the provisions contained herein, City has provided to Developer the written disclosure required by Section 212.172(b-1) of the Texas Local Government Code.

6.2 Zoning of Property. While the Parties expressly acknowledge that the Property will be voluntarily annexed in accordance with Section 6.1 of this Agreement, the Parties agree that the Concept Plan, Development Standards, and the applicable provisions of this Agreement memorialize the plan for development of the Property as provided for in Section 212.172 of the Texas Local Government Code and other applicable law. The City shall consider zoning the Property consistent with the Concept Plan, Development Standards, and applicable provisions of this Agreement contemporaneously with the annexation of the ETJ Property. Through this Agreement, the Developer expressly consents and agrees to the zoning of the Property consistent with and as contemplated by this section. In the event of a conflict between this Agreement and the zoning of the Property, the Parties agree that this Agreement shall control. The Developer agrees that nothing in this Agreement shall prevent **Exhibit D,** Section 3.4 of this Agreement, and the City Regulations, including but not limited to zoning, from being enforced against an End-Buyer.

ARTICLE VII
INFRASTRUCTURE FINANCING

7.1 Generally. Developer shall be responsible for the installation of all Public Infrastructure as shown on any plat and related construction plans. The Public Infrastructure to be financed by the MMD or PID shall include public improvement projects authorized under the PID Act and/ or MMD Legislation, including Texas Local Government Code Chapters 372 and 375. The timing and requirements for completion of the Public Infrastructure shall be determined for each phase of development, at the time Developer is ready to develop a phase, in accordance with the City Regulations and this Agreement. The Developer will design, construct, and install the Public Infrastructure using funds advanced by Developer, MMD and/or PID.

7.2 PID Financing.

(a) The City proposes to create the PID, to fund, in part, the Public Infrastructure that is not funded by the Developer or MMD and that will confer a special benefit upon the Property. As soon as reasonably practicable following a request by the Developer, and provided the City's financial advisor confirms the bonds meet the below requirements and are marketable to third party institutional investors, the City agrees to issue PID Bonds, subject to City Council approval.

(1) A PID creation petition for the Property has been submitted by the Developer to the City.

(2) PID funding of certain Public Infrastructure as authorized by the PID Act and State law, including but not limited to local streets, water, sewer and storm drainage improvements and appurtenances providing special benefit to a development phases and/or planning area, will include, to the maximum extent authorized by State law, and only as requested by the Developer, one or more of the following: (i) annual payments by the City to the Developer of PID assessments not pledged to the repayment of PID Bonds; (ii) the issuance by the City of PID Bonds secured by PID assessments and/or other security, with a total overall minimum value to lien ratio of 3 to 1 (unless the City, in its sole discretion approves a lower value to lien ratio) assuming that the Public Infrastructure to be financed by the PID as well as other infrastructure for which completion guarantees have been provided are in place as of the date of valuation; (iii) the issuance by the City of other bonds secured by PID assessments and/or other security; or (iv) any other method approved by

the Parties. The total amount of PID Bonds secured by assessments from the Property shall not exceed the amount stated in the PID creation petition which amount shall not exceed $150,000,000.

(3) The Public Infrastructure to be funded by the PID will be described in the PID Service and Assessment Plan, which Public Infrastructure is described in this Agreement and confers a special benefit on the Property (the "PID Projects").

(4) The total estimated cost of the PID Projects (the "PID Project Costs") will be as stated in the PID Service and Assessment Plan, as amended. The PID Project Costs will include the cost of two-year maintenance bonds for the PID Projects.

(5) The Developer shall determine the PID Project Costs, and the City will prepare a Service and Assessment Plan for the PID. After the City approves the final PID Project Costs, prepares a proposed assessment roll based thereon, and files the Service and Assessment Plan and proposed assessment roll with the Secretary for the City for public inspection, the City will levy special assessments against the Property.

(6) The City shall review and update the Service and Assessment Plan consistent with the requirements of Section 372.013(b) of the PID Act. As needed for consistency with the updated Service and Assessment Plan and consistent with the requirements of Sections 372.019 and 372.020 of the PID Act, the City shall make supplemental assessments, reassessments, or new assessments such that assessments reflect the updated PID Project Costs. Concurrent with the levy of PID assessments and as needed to implement the Service and Assessment Plan, the City and the Developer will enter into a PID reimbursement agreement that provides for the Developer's construction of certain PID Projects and the City's reimbursement to the Developer of certain PID Project Costs.

(7) The City will use its reasonable efforts to issue one or more series of PID Bonds secured, in whole or in part, by assessments levied against benefited property within the PID. PID Bonds may also be secured by any other revenue authorized by the PID Act or other State law and approved by the City Council of the City. The net proceeds from the sale of PID Bonds (i.e., net of costs and expenses of issuance and amounts for debt service reserves and capitalized interest) will be used to pay PID Project Costs. Notwithstanding the foregoing, the obligation of the City to issue PID Bonds is conditioned upon there being a total overall minimum value to lien ratio of 3 to 1 (unless the City, in its sole discretion approves a lower value to lien ratio) assuming that the Public Infrastructure to be financed by the PID as well as other infrastructure for which completion guarantees have been provided are in place as of the date of the fair market valuation as determined by an appraisal and the adequacy of the bond security and the financial obligation of the Developer to pay the amount, if any, by which PID Project Costs exceed the net proceeds from the sale of PID Bonds and the amount, if any, of cost overruns. The City will require the Developer to secure its obligation to pay such deficit by providing a hold back of a portion of the PID Bond proceeds not supported by the total overall 3 to 1 value to lien ratio and/or the deposit of cash to the trust estate for the shortfall. In certain limited circumstances, a performance bond, a letter of credit, or other security acceptable to the

City prior to the issuance of the PID Bonds may be considered. The net proceeds from the sale of the PID Bonds will be deposited in and disbursed from a construction fund created and administered pursuant to the indenture under which the PID Bonds are issued.

(b) PID Notices. When selling any of the Property after the PID is created, the Developer shall provide notices in a form required by and in compliance with Title 2, Chapter 5 of the Texas Property Code, as amended, to anyone who purchases property within the PID and shall notify the purchaser: (a) that the property is located in the PID; (b) that the City has issued or may issue PID bonds; (c) that the City has levied or may levy PID assessments; (d) of the unpaid reimbursement amount of the PID assessment against the Property; (e) of the estimated annual installments if PID assessments are not paid in full; and (f) of the estimated duration of the PID assessment and annual installments. Further, the Developer shall contractually require builders selling homes to continuously post a notice of the PID assessments in a conspicuous location in each model home and provide an explanation of the PID assessments in written brochures and promotional materials given to each prospective purchaser. This Section applies to all owners of all or any portion of the Property.

7.3 MMD Financing.

(a) The Parties agree that, in order to finance the Public Infrastructure not funded by the Developer, if the City has refused to issue PID Bonds to fund construction of Public Infrastructure, then MMD Bonds and MMD funds may be used to fund such construction.

(b) The City recognizes that the MMD has the authority to issue bonds pursuant to the terms of this Agreement and the City agrees that the MMD may, subject to then current conditions in the municipal debts markets and the conditions in this Agreement and the City's Resolution for consent, issue bonds solely secured by funds available to the MMD pursuant to the MMD Legislation (the "MMD Bonds") for financing and constructing Public Infrastructure by the MMD and subsequent conveyance to the City or Mustang SUD, the proceeds of which will be used to pay construction costs or reimburse Developer for, among other things, its actual construction costs for the Public Infrastructure. The issuance of MMD Bonds for any MMD shall be subject to the following conditions:

i. the adoption or amendment of a service and assessment plan, assessment roll, and an assessment order by the MMD, if applicable;

ii. the MMD may issue debt for onsite or offsite projects, but may only issue bonds secured by assessment revenues for major improvements that serve a majority of the Property;

iii. bonds secured by assessment revenues that meet the parameters of this paragraph may be issued by the MMD without further City consent: (i) minimum 3 to 1 value to lien pursuant to appraisal, (ii) no third-party financing or issuance by a public finance authority located outside the State of Texas, (iii) required minimum $100,000 denominations, and (iv) maximum 30-year maturity for each series of bonds. The MMD may issue assessment revenue bonds outside of these parameters only with written consent of the City Council;

iv. bonds issued by the MMD shall not exceed an aggregate principal amount sufficient to fund: (i) the actual costs of the Public Infrastructure to be funded by the MMD, (ii) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction and in no event for a period greater than 2 years from the date of the initial delivery of the MMD Bonds, and (iii) any costs of issuance;

v. issuance of bonds by the MMD to directly fund construction of Public Infrastructure will require additional City written consent to each issuance of a series of bonds utilized to fund construction of Public Infrastructure;

vi. issuance of bonds by the MMD for reimbursement to Developer by the MMD or acquisition of previously constructed Public Infrastructure may be issued without City written consent, subject to the other parameters of this Section;

vii. approval by the Texas Attorney General of the MMD Bonds and registration of the MMD Bonds by the Comptroller of Public Accounts of the State of Texas;

viii. the Developer is current on all taxes, assessments, fees and obligations to the City;

ix. the Developer is not in default under this Agreement;

x. no outstanding MMD Bonds or PID Bonds are in default and no reserve funds have been drawn upon that have not been replenished;

xi. review and approval by the City of the plats, construction plans and Service and Assessment Plan for the Public Infrastructure;

xii. the Public Infrastructure to be financed by the MMD Bonds have been or will be constructed according to the approved design specifications and construction standards imposed by this Agreement including any City Regulations;

xiii. no information regarding the City, including, without limitation, financial information, shall be included in any offering document relating to MMD Bonds without the written consent of the City; and

xiv. the Developer agrees to provide periodic information and notices of material events regarding the Developer as it relates to the development of the Property within any MMD in accordance with Securities and Exchange Commission Rule 15c2-12, as amended, any MMD Bond indenture, and any continuing disclosure agreements executed by the Developer in connection with the issuance of MMD Bonds.

(c) The consultants, underwriter, and appraiser for the MMD and the MMD Bonds will be selected by the MMD.

(d) No additional cash deposit, security or surety, beyond the land and any improvements on the land, will be provided by the Developer, or its assignees, in connection with the MMD Bonds unless so required by the underwriter for the MMD Bonds.

(e) MMD Expansion Limitations. The Parties acknowledge that the MMD Legislation limits expansion of the MMD territory to no more than 200 acres, which must all be located in the City limits. Following annexation of the Property into the City and subject to the 200-acre limitation, the Parties agree and acknowledge that the 61.58 acres of land within the Property owned by Punkadilly, LTD., or its successors or assigns, may be added to the MMD.

7.4 Costs for Non-Bank Qualified Bonds.

(a) If in any calendar year the City issues bonds, notes, or other obligations as approved by the City Council for any given year in question that would constitute a qualified tax-exempt obligation but for the issuance of the PID Bonds, or other bonds, notes or other obligations supporting public improvements for non-City owned development projects or City owned projects financed for a direct benefit to the non-City owned development projects, including bonds authorized by Texas Tax Code Chapter 311, or bonds authorized by the PID Act, then the Developer shall pay to the City a fee (the "Bank Qualified Debt Fee") to compensate the City for the debt service savings the City would have achieved had the debt issued by the City been able to be classified as a qualified tax-exempt obligation provided that all other developers or owners benefitting from the City issuing debt are similarly burdened with an obligation to compensate the City. The Bank Qualified Debt Fee of the Developer and all other developers or owners on whose behalf the City issues debt, will be calculated as follows:

> The net present value (calculated based on the Internal Revenue Service bond yield) of the debt service savings that would have accrued to the City had it been able to issue qualified tax-exempt obligation debt multiplied by a fraction, the numerator of which is the amount of debt issued by the City for any particular owner or developer (including the Developer, as applicable) and the denominator of which is the total debt issued by the City for the benefit of all owners or developers (including the Developer, as applicable).

(b) To the extent any developer(s) or owner(s) (including the Developer, as applicable) has (have) paid the Bank Qualified Debt Fee for any particular calendar year, any such Bank Qualified Debt Fee paid subsequently by a developer or owner (including the Developer, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or owner(s) (including the Developer, as applicable) as necessary so as to put all developers and owners so paying for the same calendar year in the required payment proportion as set forth above, said reimbursement to be made by the City within ten (10) business days after its receipt of such subsequent payments of the Bank Qualified Debt Fee.

(c) If in any calendar year the City issues PID Bonds on its own account that exceed the amount that would otherwise qualify the City for the issuance of bank qualified debt, no PID Bonds are issued for the Property, or if the City fails to charge the Bank Qualified Debt Fee to any other developer or owner on whose behalf the City has issued debt and fails to cure such oversight, then no Bank Qualified Debt Fee shall be due under this provision and if any Bank Qualified Debt

Fee had already been paid to the City under this provision, then such Bank Qualified Debt Fee shall be reimbursed promptly to the Developer from lawfully available and otherwise unencumbered funds.

ARTICLE VIII
EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given in writing (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time to be determined based on the nature of the alleged failure, but in no event more than 30 days after written notice of the alleged failure has been given). Notwithstanding the foregoing, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured and within such 30-day period gives written notice to the non-defaulting Party of the details of why the cure will take longer than 30 days with a statement of how many days are needed to cure.

8.2 Remedies. If a Party is in default, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, or actions for specific performance, mandamus, or injunctive relief. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL ENTITLE THE AGGRIEVED PARTY TO TERMINATE THIS AGREEMENT OR LIMIT THE TERM OF THIS AGREEMENT.

ARTICLE IX
ASSIGNMENT AND ENCUMBRANCE

9.1 Assignment by Developer to Successors.

(a) The Developer has the right (from time to time without the consent of the City, but upon prior written notice to the City) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of the Developer under this Agreement, to any person or entity (an "Developer Assignee") that (i) is or will become an owner of any portion of the Property or (ii) is controlled by or under common control by the Developer and becomes an owner of any portion of the Property, provided that the Developer is not in breach of this Agreement at the time of such assignment. A Developer Assignee is considered the "Developer" and a "Party," under this Agreement for purposes of the obligations, rights, title, and interest assigned to the Developer Assignee. Notice of each proposed assignment to a Developer Assignee shall be provided to the City at least fifteen (15) days prior to the effective date of the assignment, which notice shall include a copy of the proposed assignment document together with the name, address, telephone number, and e-mail address (if available) of a contact person representing the Developer Assignee.

(b) Each assignment shall be in writing executed by the Developer and the Developer Assignee and shall obligate the Developer Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each fully executed assignment to a Developer Assignee shall be provided to all Parties within fifteen (15) days after execution. From and after such assignment, the City agrees to look solely to the Developer Assignee for the performance of all obligations assigned to the Developer Assignee and agrees that the Developer shall be released from subsequently performing the assigned obligations and from any liability that results from the Developer Assignee's failure to perform the assigned obligations; provided, however, if a copy of the assignment is not received by the City within 15 days after execution, Developer shall not be released until the City receives such copy of the assignment.

(c) 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.

(d) The Developer shall maintain written records of all assignments made to Developer Assignees, including a copy of each executed assignment and the Developer Assignee's Notice information as required by this Agreement, and, upon written request from another Party, shall provide a copy of such records to the requesting person or entity.

9.2 Assignment by the City. The City has the right (from time to time without the consent of another Party, but upon prior written Notice to each other Party) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of the City under this Agreement, to any agency, authority, or political subdivision of the state (a "City Assignee"). Notice of each proposed assignment to a City Assignee shall be provided to each other Party at least 15 days prior to the effective date of the assignment, which Notice shall include a copy of the proposed assignment document together with the name, address, telephone number, and e-mail address of a contact person representing the City Assignee who the other Party may contact for additional information. Each assignment shall be in writing executed by the City and the City Assignee and shall obligate the City Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each fully executed assignment to a City Assignee shall be provided to all Parties within 15 days after execution. From and after such assignment, all Parties agree to look solely to the City Assignee for the performance of all obligations assigned to the City Assignee and agrees that the City shall be released from subsequently performing the assigned obligations and from any liability that results from the City Assignee's failure to perform the assigned obligations; provided, however, if a copy of the assignment is not received by the other Parties within 15 days after execution, the City shall not be released until the other Parties receive such copy of the assignment. No assignment by the City shall release the City from any liability that resulted from an act or omission by the City that occurred prior to the effective date of the assignment unless the other Parties approve the release in writing. The City shall maintain written records of all assignments made by the City to City Assignees, including a copy of each executed assignment and the City Assignee's Notice information as required by this Agreement, and, upon written request from another Party, shall provide a copy of such records to the requesting person or entity.

9.3 Collateral Assignments. The Developer and Developer 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 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 (hereinafter defined) information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement and shall be given a reasonable time to do so in addition to the cure periods otherwise provided to the defaulting Party by this Agreement; and the City agrees to accept a cure offered by the lender as if offered by the defaulting Party. 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 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.

9.4 Transfer of Warranties. Any Public Infrastructure that are transferred to the City shall be accompanied by all applicable third-party bonds and warranties related to construction and maintenance of such Public Infrastructure.

9.5 Assignees as Parties. An assignee authorized in accordance with this Agreement and for which notice of assignment has been provided in accordance with this Agreement shall be considered a "Party" for the purposes of this Agreement. With the exception of the End-Buyer of a lot within the Property, any person or entity upon becoming an owner of land or upon obtaining an ownership interest in any part of the Property shall be deemed to be a "Developer" and have all of the obligations of the Developer as set forth in this Agreement and all related documents to the extent of said ownership or ownership interest.

9.6 No Third-Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

ARTICLE X
RECORDATION AND ESTOPPEL CERTIFICATES

10.1 Binding Obligations. This Agreement and all amendments hereto (including amendments to the Concept Plan as allowed in this Agreement) and assignments hereof shall be recorded in the deed records of each county within which the Property is located. This Agreement binds and constitutes a covenant running with the Property. Upon the Effective Date, this Agreement shall be binding upon the Parties and their successors and assigns permitted by this Agreement and forms a part of any other requirements for Development within the Property. This

Agreement, when recorded on or after the Effective Date, shall be binding upon the Parties and their successors and assigns as permitted by this Agreement and upon the Property; however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer/homebuyer of a fully developed and improved lot (an "End-Buyer") and shall not negate the End-Buyer's obligation to comply with the City's Regulations, including but not limited to zoning ordinances, as they currently exist or may be amended.

10.2 Estoppel Certificates. From time to time upon written request of the Developer, if needed to facilitate a sale of all or a portion of the Property or a loan secured by all or a portion of the Property, the City will execute a written estoppel certificate in a form and substance satisfactory to the City, to its reasonable knowledge and belief, identifying any obligations of the Developer under this Agreement that are in default. The Developer shall pay the City $1,000 at the time of the Developer's request for an estoppel certificate for each request in excess of one per calendar year.

ARTICLE XI
ADDITIONAL PROVISIONS

11.1 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council of the City; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

11.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To the City:	Attn: City Manager City of Celina 142 North Ohio Celina, TX 75009 E-mail: jlaumer@celina-tx.gov TEL: (972) 382-2682
With a copy to:	Attn: Julie Fort Messer, Fort, & McDonald, PLLC 6371 Preston Road, Suite 200 Frisco, Texas 75034 E-mail: Julie@txmunicipallaw.com TEL: (972) 668-6400

To the Developer: Attn: Vijaya Borra
DFW Land, LLC
826 Mango Court
Coppell, TX 75019

With a copy to: Attn: Mindy Koehne
Coats Rose
14755 Preston Road, Suite 600
Dallas, Texas 75254

Any Party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other Party.

11.3 Interpretation. The Parties acknowledge that each has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

11.4 Time. In this Agreement, time is of the essence and compliance with the times for performance herein is required.

11.5 Authority and Enforceability. 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) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. The Developer represents and warrants that this Agreement has been approved by appropriate action of the Developer, and that the individual executing this Agreement on behalf of the Developer has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions and to the extent provided by law.

11.6 Entire Agreement. This Agreement, and any agreement related to fees to be charged by a homeowner's association to support public education, constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties.

11.7 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

11.8 Applicable Law; Venue. This Agreement is entered into pursuant to, and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in each county in which the Property is located. Exclusive venue for any action to enforce or construe this Agreement shall be in the County District Court in which any of the Property is located.

11.9 Non-Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

11.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11.11 Further Documents. The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement. This provision shall not be construed as limiting or otherwise hindering the legislative discretion of the City Council seated at the time that this Agreement is executed or any future City Council.

11.12 Exhibits. The following exhibits are attached to this Agreement and are incorporated herein for all purposes:

Exhibit A	Legal Description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Concept Plan
Exhibit D	Development Standards
Exhibit E	Roadway Improvements

11.13 Governmental Powers; Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its respective governmental powers, immunities, or rights except as provided in this section. The Parties acknowledge that the City waives its sovereign immunity as to suit solely for the purpose of adjudicating a claim under this Agreement. This is an agreement for the provision of goods or services to the City under Section 271.151 et seq. of the Texas Local Government Code.

11.14 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three (3) business days after the occurrence of a force majeure event, the Party claiming the right to temporarily suspend its performance, shall give notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. A Party that fails to provide timely notice of an event of force majeure will be deemed to be able to resume full performance within thirty (30) days of such event. The term "force majeure" shall include events or circumstances that are not within the reasonable control of Party whose performance is suspended and that could not have been avoided by such Party with the good faith exercise of good faith, due diligence and reasonable care.

11.15 Amendments. This Agreement cannot be modified, amended, or otherwise varied, except in writing signed by the City and the Developer expressly amending the terms of this Agreement.

11.16 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.

11.17 Form 1295 Certificate. The Developer represents that it has complied with Texas Government Code, Section 2252.908 and in connection therewith, the Developer has completed a Texas Ethics Commission Form 1295 Certificate generated by the Texas Ethics Commission's electronic filing system in accordance with the rules promulgated by the Texas Ethics Commission. The Developer further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate. The Parties agree that, except for the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295 completed by the Developer. The information contained in the From 1295 completed by the Developer has been provided solely by the Developer and the City has not verified such information.

[signatures on following pages]

EXECUTED by the City and the Developer on the respective dates stated below after approval of the City Council of the City on 12/13, 2022

Date: 12/21/22

CITY OF CELINA

By: [signature]
Sean Terry, Mayor

ATTEST:

[signature]
Lauren Field, City Secretary

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 21 day of 12, 2022, by Sean Terry, the Mayor of the City of Celina, Texas, on behalf of said City.

(SEAL)

LAUREN FIELD
Notary Public, State of Texas
Comm. Expires 07-05-2026
Notary ID 129873163

[signature]
Notary Public, State of Texas

Lauren Field
Name printed or typed

Commission Expires: 07-05-26

DEVELOPER:

DFW Land, LLC
a Texas limited liability company

By: [signature]
Name: Vijay Borra
Title: Manager

STATE OF TEXAS §
§
COUNTY OF Dallas §

BEFORE ME, a Notary Public in and for the State of Texas, duly authorized to take acknowledgments, on January 24, 2023 personally appeared Vijay Borra, _________ of DFW Land, a __________________ company and acknowledged that he executed the foregoing document on behalf of said limited liability company.

JAMES CALEB FLETCHER
Notary Public, State of Texas
Comm. Expires 03-24-2026
Notary ID 133865924

James Fletcher
Notary Public in and for the State of Texas

EXHIBIT A
DESCRIPTION OF THE PROPERTY

EXHIBIT "A" – LEGAL DESCRIPTION

LEGAL DESCRIPTION

BEING, all of that 386.212-acre (16,823,373 square-foot) tract of land situated in the Thomas B. Cox Survey, Abstract No. 309, the Arthur E. Norwood Survey, Abstract No. 969, the John Ray Survey, Abstract No. 1104, the William S. Ray Survey, Abstract No. 1105, and the Texas and Pacific Railroad Company Survey, Abstract No. 1299, Denton County, Texas; being all of that tract of land described in Special Warranty Deed to Punkadilly, Ltd as recorded in Instrument No. 2011-37656 of the Official Records of Denton County, Texas; and being all of that tract of land described in General Warranty Deed to Denton Sorrells, LLC as recorded in Instrument No. 2016-161419; said 386.212 acre tract being more particularly described by metes and bounds as follows:

BEGINNING, at a 1/2-inch iron rod found at the northwest corner of said Denton Sorrells tract; said point being the north corner of that tract of land described in Special Warranty Deed with Vendor's Lien to Fashand Farm Ltd. as recorded in Instrument No. 2004-135532 of said Official Records; said point being in the southeast right-of-way line of Farm to Market Road No. 428 (a variable width right-of-way; hereafter called FM-428);

THENCE, with the northwest line of said Denton Sorrells tract and the southeast line of said FM-428, the following four (4) courses and distances:

> North 47 degrees 50 minutes 26 seconds East, a distance of 1,792.51 feet to a 1/2-inch iron rod found for corner;
>
> North 47 degrees 50 minutes 57 seconds East, a distance of 248.64 feet to an angle point;
>
> North 45 degrees 05 minutes 39 seconds East, a distance of 100.06 feet to an angle point;
>
> North 47 degrees 50 minutes 05 seconds East, a distance of 673.75 feet to a 1/2-inch iron rod found at the north corner of said Denton Sorrells tract; said point being the northwest corner of Willow Wood, an addition to Denton County, Texas as recorded in Cabinet M, Slide 260 of the Plat Records of Denton County, Texas;

THENCE, South 23 degrees 24 minutes 12 seconds East, departing the southeast line of said FM-428, with the northeast line of said Denton Sorrells tract and the southwest line of said Willow Wood, a distance of 1,066.49 feet to a 60D nail found for corner;

THENCE, South 47 degrees 42 minutes 51 seconds East, continuing with the northeast line of said Denton Sorrells tract and the southwest line of said Willow Wood, a distance of 640.13 feet to a 1/2-inch iron rod found at the most easterly northeast corner of said Denton Sorrells tract; said point being the southwest corner of said Willow Wood; said point being the northwest corner of said Punkadilly tract;

THENCE, North 89 degrees 22 minutes 43 seconds East, with the north line of said Punkadilly tract and the south line of said Willow Wood, a distance of 2,035.25 feet to a 5/8-inch iron rod found at the northeast corner of said Punkadilly tract and the southeast corner of said Willow Wood; said point being the approximate center of Smiley Road (generally recognized public road, no record of dedication found on subject property);

THENCE, South 00 degrees 22 minutes 36 seconds East, along approximate center of Smiley Road, a distance of 1,321.65 feet to a 1/2-inch iron rod found at the southeast corner of said Punkadilly tract; said point being the northeast corner of that called 62.13-acre tract described in Special Warranty Deed to Smiley Road, Ltd. recorded in Instrument No. 2006-21488 of said Official Records;

THENCE, South 89 degrees 41 minutes 47 seconds West, departing said Smiley Road, with the south line of said Punkadilly tract and the north line of said 62.13-acre tract, a distance of 2,040.69 feet to a point for corner at the southwest corner of said Punkadilly tract and the northwest corner of said 62.13-acre tract; said point being in the east line of said Denton Sorrells tract;

THENCE, with the east line of said Denton Sorrells tract, the following four (4) courses and distances:

South 00 degrees 19 minutes 36 seconds East, a distance of 1,325.28 feet to a 1/2-inch iron rod found at the southwest corner of said 62.13-acre tract; said point being in the north line of that tract of land described in Special Warranty Deed to Earthman Estates, LP recorded in Instrument No. 2017-75188 of said Official Public Records; said point being a salient corner in the east line of said Denton Sorrells tract;

South 88 degrees 58 minutes 43 seconds West, a distance of 704.96 feet to a 1/2-inch iron rod found for corner at the northwest corner of said Earthman Estates tract;

South 00 degrees 26 minutes 37 seconds East, a distance of 1,810.06 feet to a 1/2-inch iron rod with "WIER & ASSOC" cap found for corner; said point being the southwest corner of said Earthman Estates tract; said point being the northwest corner of that called 111.88-acre tract described in Special Warranty Deed with Vendor's Lien to Smiley Road, Ltd. recorded in Instrument No. 2005-77986 of said Official Records;

South 00 degrees 52 minutes 14 seconds East, with the west line of said 111.88-acre tract, a distance of 865.64 feet to a 1/2-inch iron rod found at the southeast corner of said Denton Sorrells tract; said point being in the north line of that called 109.26-acre tract described in Special Warranty Deed with Vendor's Lien to Smiley Road, Ltd. recorded in Instrument No. 2006-2064 of said Official Records;

THENCE, South 89 degrees 30 minutes 17 seconds West, with the south line of said Denton Sorrells tract, and the north line of said 109.26-acre tract, and the north line of that tract of land described as Tract 4 in Special Warranty Deed with Vendor's Lien to CADG Sutton Fields, LLC recorded in Instrument No. 2015-15963 of said Official Records, a distance of 1,947.13 feet to a point at the southwest corner of said Denton Sorrells tract; said point being the most southerly southeast corner of said Fashand Farm tract;

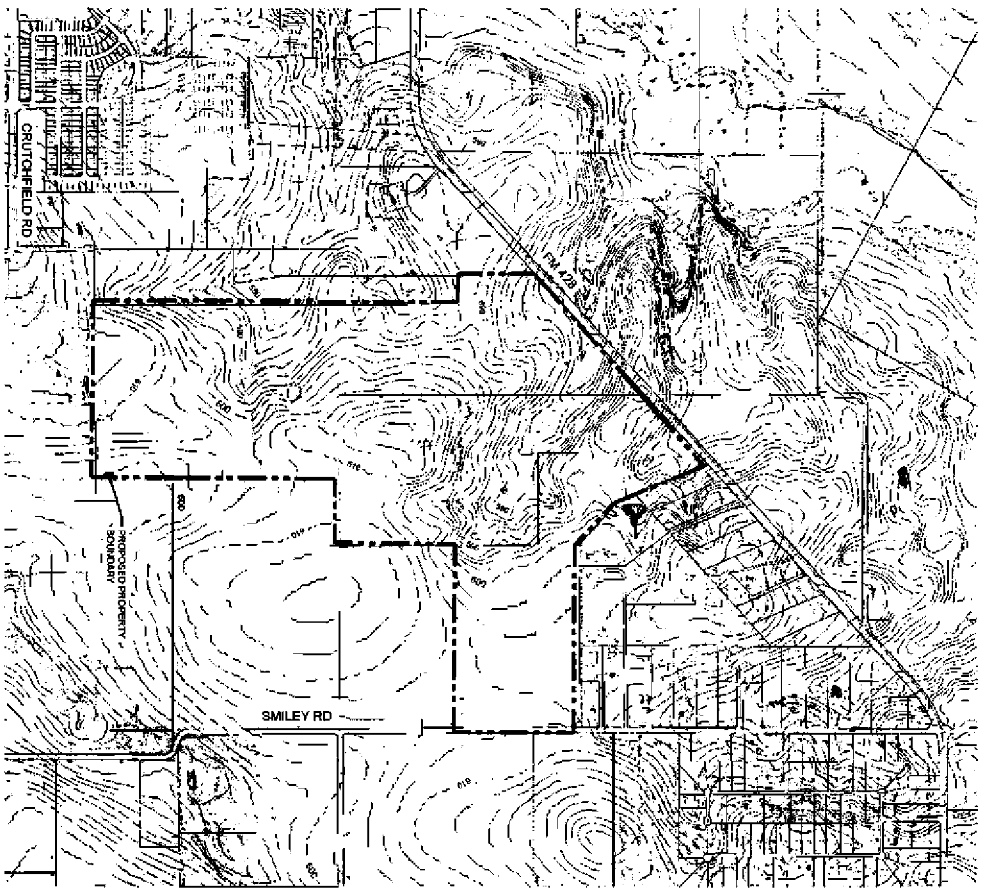
THENCE, with the west line of said Denton Sorrells tract and the east line of said Fashand Farm tract, the following three (3) courses and distances:

North 00 degrees 40 minutes 11 seconds West, departing the north line of said Tract 4, a distance of 4,017.88 feet to a 1/2-inch iron rod found for corner;

North 89 degrees 45 minutes 14 seconds West, a distance of 310.88 feet to a 1/2-inch iron rod found for corner;

North 00 degrees 35 minutes 29 seconds West, a distance of 838.23 feet to the POINT OF BEGINNING and containing 386.212 acres or 16,823,373 square feet of land, more or less.

EXHIBIT B
DEPICTION OF THE PROPERTY



BGE

Exhibit B - Depiction of Property

Denton County, Texas
August 2022

EXHIBIT C
CONCEPT PLAN

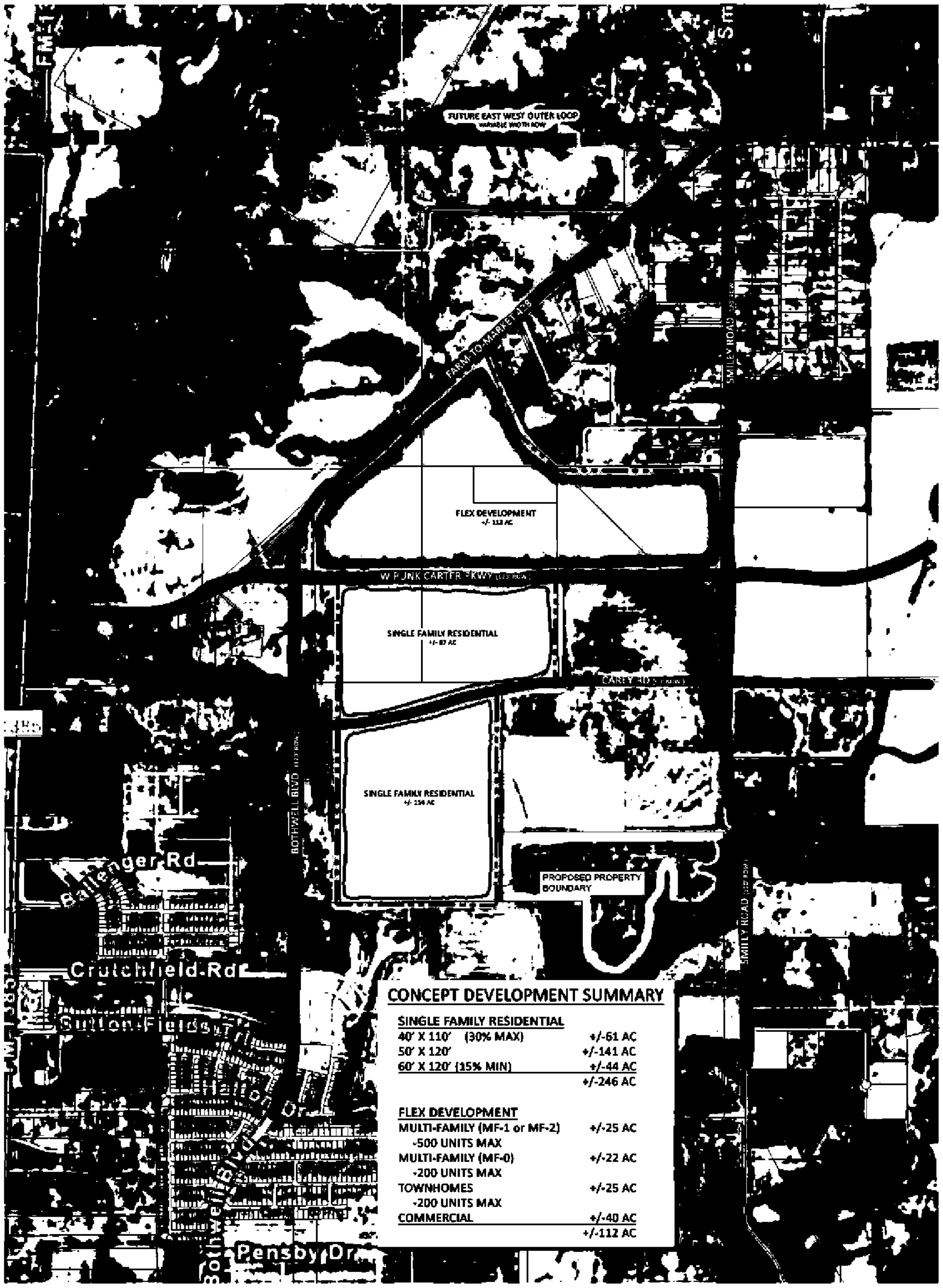


EXHIBIT D
DEVELOPMENT STANDARDS

Concept Plan:

The subject property shall generally develop per the attached Concept Plan. The Concept Plan displays the general location and configurations of land use patterns, and other infrastructure and amenities, all of which can be adjusted for pragmatic purposes at time of permitting. Such modifications shall not be unreasonably withheld but are subject to review and approval by the Director of Development Services. Nothing on the Concept Plan precludes the administration of Engineering requirements, such as detention, right-of-way dedication, or any other design regulation.

Architecture:

The subject property is an architecturally, historically, and culturally significant tract of land that is meaningfully located; thus, all structures shall abide by the City's architectural standards, and as may be amended.

Amenities, Trails & Open Space:

- 10' trails along major thoroughfares
- 8' trails along any gas easements or power line easements
- Open space shall generally conform to the Neighborhood Vision Book for Multifamily and Townhome uses. Single-Family detached land uses shall contain a minimum of 15% open space as defined in the Neighborhood Vision Book.
- 1-acre minimum amenity center site is required for the "Single-family Residential" development with an open-air pavilion for shade, a swimming pool, bathrooms, and a playground.
- 0.5-acre minimum amenity center site is required for the "Flex Development" area with an open-air pavilion and playground.

Land Use & Design Standards:

Development of the subject property shall abide by all standards in the Zoning Ordinance, Subdivision Ordinance, and all otherapplicable City ordinances, as may be amended, except as follows. The base zoning of the various tracts shall reflect the most closely related base zoning district for the proposed land use from the Zoning Ordinance and abide by all applicable design standards.

- Minimum 20 acres reserved for C (Retail, Office, & Commercial)
- Maximum of 200 units SF-A (townhomes)
- Maximum of 200 units of MF-0 (horizontal MF)
- Maximum of 350 units total of MF-2 or MF-3
- SF-R is generally allowed per the below lot mix:
  - A minimum 15% of the lots shall be 60' or wider
  - A maximum of 35% of the lots on minimum 40'

Minimum lot width for front entry garages. Any lot width less than fifty (50) feet shall have a rear entry, alley-loaded garage. Front-loading garages are allowed only on lots that are fifty (50) feet or greater in width.

EXHIBIT E
ROADWAY IMPROVEMENTS