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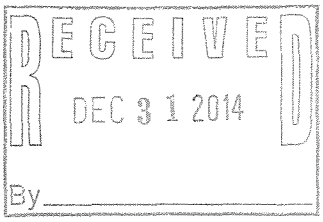

RESTATED DEVELOPMENT AGREEMENT

FOR

TESSERA ON LAKE TRAVIS

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RESTATED DEVELOPMENT AGREEMENT

FOR

TESSERA ON LAKE TRAVIS

This Restated Development Agreement for Tessera on Lake Travis is made by and among the **CITY OF LAGO VISTA, TEXAS**, a home rule city and municipal corporation (the "**City**") and **HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP**, a Texas limited partnership (the "**Hines Lake Travis**") and **HINES LAKE TRAVIS LAND II LIMITED PARTNERSHIP**, a Texas limited partnership (the "**Hines Lake Travis II**") collectively referred to as "**the Parties**". Hines Lake Travis and Hines Lake Travis II are herein referred to collectively as "**Developers**."

RECITALS

WHEREAS, in 2007, Hines Lake Travis purchased approximately 877 acres in Travis County, Texas, more particularly described in **Exhibit "A"** here attached and incorporated for all purposes (the "**Property**") located in the extra-territorial jurisdiction of City ("ETJ").

WHEREAS, on April 17, 2008, the City approved a Development and Annexation Agreement for Rodger's Ranch (the" **Agreement**").

WHEREAS, on May 7, 2009, City and Hines Lake Travis entered into the First Amendment to the Development Agreement for Rodgers Ranch" ("**First Amendment**"). The Agreement, as amended by the First Amendment, is referred to as the "**Amended Agreement**."

WHEREAS, Hines Lake Travis and the City entered into the Agreement pursuant to State Law (defined below).

WHEREAS, pursuant to the Amended Agreement, the City Council annexed the Property into the corporate boundaries of the on November 19, 2009.

WHEREAS, on December 17, 2009, the City adopted Ordinance 09-12-17-01 which established a PDD Zoning District for the Property, as amended by Ordinance 12-07-19-01 ("**PDD Zoning Ordinance**");

WHEREAS, on December 22, 2010, Hines Lake Travis conveyed to Hines Lake Travis II approximately 172.989 acres of the Property by that one certain Limited General

Warranty Deed recorded in Document No. 2010193060, Official Public Records of Travis County, Texas ("**Hines Lake Travis II Property**");

WHEREAS, the City approved the form of the assignment of Hines Lake Travis' rights and obligations under the Amended Agreement to the Hines Lake Travis Property to Hines Lake Travis II.

WHEREAS, on May 19, 2011 the City Council approved the Second Amended and Restated Development and Annexation Agreement for Rogers Ranch ("**Second Amended Agreement**") which incorporated and replaced all prior agreements regarding the annexation and development of the Project.

WHEREAS, on May 11, 2012, Developers filed a petition with the City requesting the creation of the Tessera on Lake Travis Public Improvement District for the Project ("**PID**");

WHEREAS, the Parties desire to amend the Second Amended Agreement to restate the Second Amended Agreement, hereinafter to be referred to as the "**Restated Agreement**."

NOW, THEREFORE, for and in consideration of the above stated recitals, which are made a part of this Restated Agreement, the benefits described below, plus the mutual promises expressed herein, the sufficiency of which is hereby acknowledged by the Parties, the Parties hereby contract, covenant and agree as follows:

1. PURPOSES, TERM AND CONSIDERATION

1.01 **Purpose**. This Restated Agreement modifies, amends and replaces the Second Amended Agreement.

1.02 **Authority**. Authority for the Developers and the City to enter into this Restated Agreement exists under The City Charter of the City, Article III, Section 52-a of the Texas Constitution; *Chapt. 212, Subchapter G, Tex. Local Gov't Code*, ("*Subchapter G*"); *Chapt. 43, Subchapter A, Tex. Local Gov't Code*, ("*Chapter 43*"), *Chapt. 245, Tex. Local Gov't Code*, ("*Chapter 245*"), *Chapter 395, Tex. Local Gov't Code* ("*Chapter 395*") and such other statutes as may be applicable.

1.03 **Municipal Planning**. The City is located in a rapidly growing metropolitan area for which new construction and land development can positively or negatively impact the future character and finances of the City. The City finds development agreements to promote master-planned communities, such as Tessera, are an appropriate way of establishing land use controls, providing for the construction of appropriate and necessary utility and roadway infrastructure, encouraging orderly economic growth, protecting the environment, and promoting the welfare of present and future citizens of the area. The Parties agree that the extension of centralized utilities to new developments provides superior environmental protections than those available from individual water wells and septic systems.

1.04 **Project Defined**. The Project established by the Agreement includes a master-planned, residential subdivision that may include single family lots, condominium sites, multi-family sites, amenity area(s) with recreational facilities, public parks, a day dock and a dry-stacked boat storage facility, space for civic uses and future commercial development sites along F.M. 1431. The Project, includes, the subdivision of the Property, the construction of off-site and on-site utility facilities and Subdivision Infrastructure (defined below) to be dedicated and conveyed to the City, the construction of intersection improvements on FM 1431 and other infrastructure adequate for the development of the Project consistent with this Restated Agreement and the Applicable Rules ("**Project**"). The Project may include multiple phases for platting and construction purposes. The Project also includes the Utility Facilities (defined below). The Development Plan attached to the Agreement, Amended Agreement and Second Amended Agreement were and are conceptual pictorial depictions of the Project; provided, however, that said depictions do not define the Project for purposes of Vesting. The Developers intend to develop the Property under the name *Tessera on Lake Travis* ("**Tessera**") and when used in this Restated Agreement, *Tessera* shall mean and include the Project.

1.05 **Benefits.**

(a) The City desires to enter into this Restated Agreement to provide additional control to the development standards for the Property, to facilitate the development of the Project to enhance its tax base by the timely performance of the City's obligations hereunder, and to address certain contingencies if the City Council approves the PID.

(b) This Restated Agreement provides: (i) for the uniform review and approval of plats and development permits for the Project; (ii) alternative standards under certain City ordinances for the benefit of the Project; (iii) the City's commitment to provide water and wastewater service to Tessera; (iv) the terms for the financing and construction of Utility Facilities and Subdivision Infrastructure necessary for the development of the Project; and (v) judicially enforceable obligations of the City with respect to the City's provision of water and wastewater service to the Property in accordance with the terms of this Restated Agreement. The City's execution of this Restated Agreement constitutes a valid and binding obligation of the City under State Law. Developers' execution of this Restated Agreement constitute a valid and binding obligation of Developers. The City acknowledges that Developers are, in making its decision to commit substantial resources and money to develop the Project, acting in reliance upon the City's representation that the City has the legal authority under State law to enter into this Restated Agreement and perform the City's obligations under this Restated Agreement and that City will timely perform its obligations under this Restated Agreement. The Developers also acknowledge the City is to committing substantial resources and financing to meet the City's obligations under this Restated Agreement, including the timely provision of water and wastewater service to Tessera.

(c) The Developers, their grantees, successors and assigns, will benefit from the development certainty provided by this Restated Agreement, the substantial commitments of

the City with respect to financing and providing a potable water supply, and the certainty that municipal services, including adequate utility improvements and connections to the City utility system sufficient to serve the Project when requested by Developers.

(d) The Parties desire to simplify the operation and interaction among this Restated Agreement (including the Tessera Development Plan), the PDD Zoning Ordinance, the Applicable Rules and the City Rules.

1.06 **Consideration**. The benefits to the Parties set forth in the Recitals and herein, plus the mutual promises expressed herein, are good and valuable consideration for this Restated Agreement, the sufficiency of which is hereby acknowledged by the Parties.

1.07 **Term**. The term of this Restated Agreement will commence on the Effective Date and continue for twenty five (25) years thereafter, unless sooner terminated under this Restated Agreement as provided herein, (the "**Term**"). After the first Term, this Restated Agreement may be extended for successive five-year periods upon written agreement among the Developers and the City.

2. DEFINITIONS

2.01 **Agreement**. The Development and Annexation Agreement for Rodgers Ranch between the City and Developer approved by the City on April 17, 2008 and having an effective date of May 7, 2009.

2.02 **Applicable Rules**. City ordinances, rules, and regulations: a) in effect and made applicable to the Project as of May 7, 2009, limited only to the extent that such ordinances, rules, and regulations are subject to vesting under State Law; b) specifically modified in their application to the Project by this Restated Agreement; c) the PDD Development Plan; d) to the extent any City Rules are not Vested to May 7, 2009, City Rules as modified from time to time shall apply to the Project and Property; e) the LCRA Highland Lakes Water Quality Ordinance in effect on May 7, 2009; and (f) state and federal law.

2.03 **City**. The City of Lago Vista, Texas, a Texas home rule city with a Council/City Manager form of government.

2.04 **City Manager**. The city manager of Lago Vista, Texas.

2.05 **City Council**. The city council of Lago Vista, Texas.

2.06 **City Engineer**. The engineer for Lago Vista, Texas or an entity assigned to perform the duties thereof with respect to Tessera.

2.07 **City Improvements**. The additional water and wastewater treatment capacity and utility improvements, if any, that the City is obligated to construct for the City to provide

2,030 LUEs of water and wastewater service to the Property, in accordance with the terms of this Restated Agreement.

2.08 **City Rules**. The entirety of the City's ordinances, rules and duly adopted regulations, as amended form time to time.

2.09 **City Utility Service Plan**. See Section 6.06.

2.10 **Construct and Construction**. To form by combining materials or parts. To build. The way in which a thing is formed or constructed.

2.11 **Developer(s).** Hines Lake Travis Land Limited Partnership, a Texas limited partnership and Hines Lake Travis Land II Limited Partnership, a Texas limited partnership, and their respective grantees, successors and assigns.

2.12 **Developer Improvements**. The Utility Improvements described in Article 6 and the attached **Exhibit "C"** that Developers are obligated to construct and convey to the City at no cost and that are necessary for the City to deliver 2,030 LUEs of water and wastewater service to the Property.

2.13 **Effective Date**. August 16, 2012.

2.14 **Living Unit Equivalent or LUE.** Living Unit Equivalent or LUE shall have the meaning as defined in City Ordinance No. 09-06-04-01.

2.15 **Lot.** A parcel of land described by a subdivision plat recorded in the Official Public Records of Travis County, Texas

2.16 **Parties**. The City of Lago Vista, Hines Lake Travis Land Limited Partnership, a Texas limited partnership, and Hines Lake Travis Land II Limited Partnership, a Texas limited partnership.

2.17 **PDD Development Plan**. The development standards, permitted uses, regulations, limitations set forth in the PDD Zoning Ordinance and exhibits attached thereto adopted by the City Council on July 19, 2012 and as hereafter may be amended from time to time.

2.18 **PDD Map**. The map attached to and part of the PDD Development Plan.

2.19 **Permitted Uses**. Land uses and limitations thereon set forth in the PDD Development Plan.

2.20 **Planning and Zoning Commission**. The duly appointed Planning and Zoning Commission of the City.

2.21 **Pressure Plane**. One of the three water pressure planes ("Lower Pressure Plane" "Middle Pressure Plane" or "Upper Pressure Plane") within Tessera described by elevation in the attached **Exhibit "C".**

2.22 **Project Approvals**. All approvals, variances, and waivers by the City that are necessary or required for the development of the Project, including, the PDD Zoning Ordinance, preliminary plats, final plats, site plans, development permits, this Restated Agreement and other future regulatory approvals issued by the City.

2.23 **Project Phase 1**. A portion of the Property not to exceed 263 acres, more or less, as depicted in the attached **Exhibit "E."**

2.24 **Property**. The 877 acres of land, more or less, in Travis County, Texas, described on the attached **Exhibit "A".**

2.25 **Public Improvement District, or PID**. The Tessera on Lake Travis Public Improvement District that the City may approve as authorized by Chapter 372, Texas Local Government Code.

2.26 **State Law**. The laws of the State of Texas duly adopted, including but not limited to the City Charter of the City, *Chapter 245, Texas Local Government Code, Chapter 43, Texas Local Government Code,* Chapter 212, *Subchapter G, Texas Local Government Code, Chapter 395, Local Government Code, and Chapter 380, Texas Local Government Code*. In the event of a conflict between this Restated Agreement and State Law, State Law shall control. In the event of a conflict between this the City Charter and State Law, State Law shall control.

2.27 **Subdivision Infrastructure**. All streets, roads, sidewalks, drainage, water and wastewater lines and facilities and all other infrastructure within the Property to be constructed by Developers and dedicated and conveyed to the City at no cost to the City. The term includes the construction of intersection improvements on FM 1431, a portion of which will be owned and operated by the Texas Department of Transportation. The term does not include Developer Improvements described in Article 6.

2.28 **Tessera Development Plan**. The development standards, permitted uses, regulations, limitations set forth in the attached **Exhibit "B"**, which constitutes a plan for development under State Law.

2.29 **Tessera Development Plan Map**. The map attached to and part of the Tessera Development Plan that depicts a conceptual layout of the Project of the Property.

2.30 **Utility Facilities**. The water and wastewater improvements described in Article 6 and in the attached **Exhibit "C".**

2.31 **Utility Facilities Phase or UF Phase**. The water and wastewater improvements grouped into a particular phase, as described in the attached **Exhibit "C"**.

2.32 **Utility Improvement**. A specific, individual water or wastewater improvement(s) associated with a particular Utility Facilities Phase, as described in the attached **Exhibit "C".**

2.33 **Utility Services**. Sufficient water and wastewater services delivered to the Property to allow water meters and service connections for buildings located within the Property.

2.34 **Vest, Vested or Vested Rights**. Means the legal entitlements pursuant to State Law to develop the Project subject to the terms of this Restated Agreement and the Applicable Rules. Such entitlements shall, under no circumstances, extend to a purchaser or owner of a subdivided lot after the City has issued a certificate of occupancy to occupy a building on the subdivided lot.

2.35 **Vesting Date**. The Vesting Date for all purposes shall be the May 7, 2009.

3. REGULATORY CERTAINTY

3.01 **Applicable Rules**. During the Term of this Restated Agreement the Applicable Rules will apply to and govern the requirements for: (a) subdividing and recording final plats; (b) the Permitted Uses; (c) development of the Property; (d) amendments to the PDD Development Plan; and (e) replats. Except as otherwise provided in this Restated Agreement, no City regulations adopted after May 7, 2009 that amend, add to, or alter the Applicable Rules, whether by means of an ordinance, resolution, policy, order, or otherwise, will modify or amend the rights of the Developers to develop the Property as provided in this Restated Agreement, unless (a) mandated by State Law; (b) Developers elect, at their discretion, to have all or some of the Project become subject to a subsequently adopted change to an Applicable Rule; or (c) the application of the amended, added or altered Applicable Rules is agreed to, in writing, by Developers and the City. The City's review and action upon permit applications by Developers with respect to plats and other Project Approvals, that are compliant with this Restated Agreement, will not be unreasonably conditioned, withheld or delayed. If there is any conflict between the Applicable Rules excluding the PDD Development Plan, and the specific terms of this Restated Agreement, the specific terms of this Restated Agreement will control as State Law allows. If there is a conflict between the terms of this Restated Agreement and, excluding the PDD Development Plan, any of the exhibits attached hereto, the terms of this Restated Agreement shall control. If the Developer(s) record a final plat of any phase or section of the Project, the rights, duties and obligations of the Developers pursuant to this Restated Agreement and the Applicable Rules shall, with respect to such section or phase, survive the termination of this Restated Agreement. Developer(s) reserve the right to make application for and, as appropriate, obtain approval to re-plat any portion of the Property without loss of Vested Rights, provided neither

State Law nor this Restated Agreement otherwise limits the right to re-plat. So long as this Restated Agreement remains in effect, re-platting complying with this Section shall be deemed controlled by the Applicable Rules as if the same were an original platting under the terms of this Restated Agreement.

3.02 **Tessera Development Plan**. The development plan attached hereto as **Exhibit "B"** and incorporated herein for all purposes was previously referred to as the Rodgers Ranch Development Plan and shall hereafter be referred to as the "**Tessera Development Plan**". This Restated Agreement is a "development plan" under State Law. This stipulated protection for the Project, initially approved with the Agreement, is in addition to any subsequently acquired legal entitlements to Vest under State Law. The Parties further stipulate that the Project, as defined herein, constitutes a "project" under State Law. The total allowable level of development of the Property shall be limited by the number of Living Unit Equivalents as measured for water and wastewater service connections. Development within the Property shall not exceed 2,030 LUE's, but shall not be restricted by the City to less than 2,030 LUE's. The Parties further stipulate that so long as Developers do not increase the allowable total level of development, as measured by water and wastewater service connections, Developer may seek to amend the PDD Development Plan and may amend the layout of lots and on-site infrastructure to serve the Project in compliance with this Restated Agreement and the Applicable Rules without waiving or revoking any Vested Rights. Notwithstanding the foregoing or any other provision herein, the Vested Rights under this Restated Agreement shall terminate on a lot by lot basis for detached single family houses upon the issuance of a certificate of occupation for a building on such subdivided lot and shall terminate for development requiring a site plan upon the issuance of a certificate of occupancy for the last building shown on the site plan. Approved preliminary plats shall expire on the latter of the expiration of this Restated Agreement or the date established by the Applicable Rules. The Parties further stipulate and agree that: (a) the PDD Development Plan is the approved, agreed and accepted plan for the development of the Property; (b) the PDD Development Plan shall govern and control the development of the Property as provided in this Restated Agreement; and (c) if the City Council approves a modification or amendment of the PDD Development Plan that is not approved and consented to by the Developers, the Developers may give written notice to the City and proceed with development of the Property in compliance with the Tessera Development Plan and the Vested Rights.

3.03 **Interaction Between Tessera Development Plan and PDD Development Plan**. Since the City's approval of the Agreement, the City acknowledges the Developers have expended substantial funds for the planning of the development of the Project and Developers' proposed layout of roads, lots, open space and areas planned to be developed as a phase of Tessera have changed due to a variety of reasons, including, market conditions, engineering and topographic factors. The prior differences between the Rodgers Ranch [Tessera] Development Plan Map and the PDD Development Plan Map reflected, in part, the progression of the planning process for the Project. The Parties agree that repeatedly revising the Tessera Development Plan Map and the PDD Map would be inefficient and unnecessarily costly. The Parties stipulate that the Tessera Development Plan will only become applicable

and controlling if the PDD Development Plan is modified or amended without the approval and consent of the Developers. The Parties further stipulate that the PDD Development Plan is one of the regulatory documents or approvals that the City will use when issuing permits for the development of the Project. As of the Effective Date of this Restated Agreement, the Parties stipulate and agree the PDD Development Plan and the Tessera Development Plan do not conflict in any way that affects Developers' Vested Rights. Developers agree that development of the Project will comply with the PDD Development Plan. If Developers oppose a change to the PDD Development Plan or zoning regulations applicable to the Property, such change shall not waive or lessen Developers' entitlement to rely upon any Vested Rights. The Parties agree that if the detail of a preliminary plat or final plat, including, road alignment, generally comply with the PDD Development Plan, then neither this Restated Agreement nor the PDD Zoning Ordinance need to be amended to match the preliminary plat or final plat. Henceforth, the defined boundaries and locations of Areas 1, 2, and 3 shown on the Tessera Development Plan Map and PDD Map and the location of roads, open spaces and any other component shown on either development plan map will be established by the platting process. The boundaries for and between non-residential, multi-family, parks, single family developments must be shown on approved preliminary plats and approved final plats. The applicable zoning district standards must be referenced on an approved final plat. If Developers seek to change an allowed use within an Area, then a zoning change for the area to be changed must be filed by Developers and approved by the City. For example, a change to all or a portion of Area 2 to allow a commercial use will require a change in land use and zoning site development regulations that requires the approval of the City Council pursuant to the City's normal re-zoning procedures. The foregoing is intended to set forth the agreement of the Parties regarding the interpretation of the PDD Development Plan, this Restated Agreement and the Tessera Development Plan.

3.04 **Master Development Plan**. Notwithstanding any provision of the City's Plat and Subdivision Regulations, the master development plan for the Property shall be limited to the following elements: (a) the boundaries of approved preliminary plats; (b) within areas with an approved preliminary plats, the Master Development Plan will show roads, lot lines, drainage ways, Area boundaries, and water and wastewater lines to be dedicated to the City; (c) the boundaries of the pending preliminary plat application; (d) the approximate location of water and wastewater infrastructure and lines outside of the preliminary plat application area required to serve the development within the preliminary plat application area; (e) the approximate location of the street(s) that will connect the land within each preliminary plat application to FM 1431; (f) the approximate location of the street(s) that connect(s) one preliminary plat area to another preliminary plat area, if any, any; and (g) for phases or sections of the Project for which a final plat has been approved, the final location of all phase or section boundaries, the boundaries for and between non-residential, multi-family, parks, single family developments, lot lines, and the location of all roads and streets, drainage ways, water and wastewater lines within the phase or section. Land outside of area subject to an approved preliminary plat and preliminary plat applications may be identified on the Master Development Plan as "final platted development", "future development" or "future phases".

3.05 **Fiscal Required**. With respect to the recording of plat prior to the construction of the Subdivision Infrastructure for said plat, cash or a letter of credit in lieu of cash (such letter of credit to be in a standard form reasonably acceptable to the City shall be deposited with the City in an amount determined under the Applicable Rules. The security required by the Applicable Rules to be posted by Developers prior to recording a final plat for a parcel of land prior to construction and acceptance of the required infrastructure shall be decreased by the dollar amount of the PID funds, if any, held in trust pursuant to the terms and conditions of the trust agreement, financing agreement and related PID financing documents for the development and construction of said Subdivision Infrastructure required for the land included in the final plat. If cash is posted for the fiscal, the City will keep the funds in a separate trust account identified as fiscal for the specified Subdivision Infrastructure.

3.06 **Fast Track Construction Approval**. In conjunction with the submittal to City for the approval of construction plans ("**Plans**") for Developer Improvements or Subdivision Infrastructure, Developers may include an request to begin clearing of vegetation and site work within the limits of construction prior to the approval of the Plans ("**Fast Track Request**"). Such request shall be considered a phase of construction and shall consist of additional sheets included in the construction plans application that describe the area in which clearing and preliminary site work will occur and the location of temporary storm water controls to be installed prior to beginning clearing activities and site work. Notwithstanding the timeframes set forth in Sections 6.17 or 5.01(c) regarding the City's first set of review comments, the City shall approve or provide written comments regarding the Fast Track Request within twenty (20) calendar days of the submittal of the Plans. The time frames set forth in Sections 6.17 and 5.01(c) shall otherwise apply to all updates, resubmittal and reviews of the Fast Track Request.

4. DEVELOPER OBLIGATIONS

4.01 **Control of Development**. Subject to Section 4.02 below, Developers shall develop the Property in a manner which results in enhancing the tax base of the City; provided, however, the timing and sequencing of Developers' development of the Property will be based on market demand and conditions and will be completed as and when Developer(s) determine it to be economically feasible. Subject to market constraints, Developers shall, at no cost to the City, cause the construction of Developer Improvements and Subdivision Infrastructure necessary for the development of the Property in compliance with the this Restated Agreement, the PDD Development Plan and the Applicable Rules; provided that timing and market constraints shall not constitute a force majeure to excuse the Developers from complying with the requirements of Section 4.02 or completing construction of any Utility Facility or Subdivision Infrastructure once construction is started, within the time allowed by, and in compliance with the Applicable Rules.

4.02 **Developer Performance Standards**.

(a) If the City creates the PID, authorizes the issuance of PID bonds, and sells the PID bonds for the proposed Area No. 1 and Major Improvements Area of the PID no later than October 15, 2012, Developers will develop the Project in compliance with the following schedule:

(i) Developers will fund the design, engineering and construction and then obtain City acceptance of the UF Phase 1 Developer Improvements or before July 1, 2015; and

(ii) On or before December 31, 2015, Developers shall record one or more final plats within Project Phase 1 containing at least 150 residential lots; and

(iii) On or before July 1, 2016, Developers shall complete the construction of and dedicate to the City all of the Developer Improvements and Subdivision Infrastructure necessary to have 150 fully constructed Lots upon which buildings may be constructed.

(b) If the PID bonds are not issued by the City in accordance with Section 4.02(a), Developers will develop the Property in compliance with the following schedule:

(i) Developers will fund the design, engineering and construction and then obtain City acceptance of the UF Phase 1 Developer Improvements or before July 1, 2017; and

(ii) On or before December 31, 2017, Developers shall record one or more final plats within Project Phase 1 containing at least 150 residential lots.

4.03 **Additional Developer Obligations**. In addition to the other obligations of the Developers set forth in this Restated Agreement, the following obligations shall apply to Developers:

(a) Prior to the recording of the first subdivision plat, Developers shall cause the formation of a Home Owners Association pursuant to Article 8 of this Restated Agreement.

(b) Developers shall provide for the design and engineering of all Subdivision Infrastructure pursuant to the City design criteria, or better;

(c) Developers shall provide for the construction of all Subdivision Infrastructure according to construction plans approved by the City;

(d) Developers shall obtain the City's final acceptance of all Subdivision Infrastructure and dedicate all Subdivision Infrastructure to the City at no cost to the City.

(e) Developers shall pay all fees, charges, and costs required by city ordinance to be paid for or with respect to the development, platting, and zoning of Property and post fiscal sureties, as required herein and by the Applicable Rules in a form approved by the City Attorney and in an amount approved by the City Engineer;

(f) Developers or their respective grantees, successors, purchasers or assigns shall pay water and wastewater impact fees and tap fees for each lot, tract, parcel, and building site developed within the Property. Such fees shall be paid by the Developer(s) or its grantees, successors, purchasers or assigns for each lot or site on the earlier of the date when a building permit application is made for the structure or building to be served, or, if building permits are not then required, the date when construction of the building or structure is first commenced. The impact and tap fees paid for each such lot or site shall be the fee, rate, and charge that is established from time to time by ordinance for the City and assessed in accordance with State Law;

(g) Developers shall pay to the City all reasonable costs and expenses incurred by the City for legal, inspection and engineering services with respect to this Agreement, and the legal and engineering expenses with respect to the Subdivision as provided in the City's Fee Ordinance; the parties agree that the City may utilize an in-house inspector for inspections subject to this Agreement, and may charge Developer for those services at the rate of $35.00 per hour, subject to annual adjustments based on the Cost of Living Index for the Austin area, until and unless such services are covered by the City's fee ordinance;

(h) Developers shall obligate each grantee, successor and assign of all or part of the Property to connect to the City's water and wastewater system including construction and installation of all required water and wastewater lines, lift stations, storage, equipment, and facilities both on-site and off-site in compliance with City Rules and engineering plans and specifications approved by the City; and

(i) Developers shall obligate each grantee, successor and assign of all or part of the Property to pay, if for any reason the City fails to or is prevented from collecting Water or Wastewater Impact Fees within the Property, the City's established Capital Impact Fee per living unit equivalent ("**LUE**") for each lot or building site within the Property on the earlier of the application for a building permit or a request for water and wastewater service for the lot or site as the contribution to the costs of impact to the City's water and wastewater system, provided the City is providing water and wastewater service to the Property.

(j) The City shall have the option to terminate this Restated Agreement if Developers fail to fully comply with Section 4.02 above, or after beginning construction of buildings, Developers and homebuilders discontinue all construction within the Property for more than thirty-six (36) consecutive calendar months; and provided further, the City shall have the option to continue the development and build-out of any part or portion of the Developer Improvements or Subdivision Infrastructure that is abandoned by Developers if

funds for such improvements are available in a trust account established pursuant to the sale of bonds for the Public Improvement District.

(k) If the Developer(s) develop the Property in a manner inconsistent with this Restated Agreement, such action shall be a breach by the Developer(s).

(l) Developer(s) shall complete construction and obtain final acceptance of Subdivision Infrastructure for any section of Tessera within the time required by the Applicable Rules.

(m) With respect to any Developer Improvement, Subdivision Infrastructure or park improvement to be funded by proceeds from the sale of PID Bonds ("**PID Improvement**"), subject to the terms, conditions and provisions of the financing agreement and related documents approved and executed with respect to bonds issued by the PID, Developers shall procure bids from at least three (3) independent, competent contractors for the construction of the PID Improvement and provide copies of the bids to the City. The PID Improvements shall be bid based on the construction plans and specifications approved by the City, and contracts for construction shall be let based on bids approved by the City which approval shall not be unreasonably denied, delayed or conditioned. If the City Manager refuses to approve a bid, change order, form of the contract or any other aspect affecting the award of a construction contract for a PID Improvement, the Developer(s) may appeal such determination to the City Council. Such appeal shall be heard by the City Council no later than twenty (20) days after an appeal is submitted to the City. Developers may, at their sole discretion, not include a prevailing wage provisions in a construction contract for a PID Improvement.

(n) Regardless of whether the City approves the PID or the sale of the PID Bonds, Developers shall pay or reimburse to the City all costs associated with the formation of the PID and the issuance of PID Bonds.

4.04 **Open Space**. Developers will convey Open Space to a duly formed and funded Homeowners Association (the "**HOA**") or other appropriate entity, at the discretion of the Developers, with a continuing obligation of owners of land within the Property to fund the operation and maintenance of the Open Space for the benefit of the residents within the Property.

4.05 **Public Parks**.

(a) Subject to Section 4.07 below, Developer(s) will dedicate not less than ten (10) acres of land within the Property to the City as parkland pursuant to the City's Parkland Dedication Ordinance.

(b) As a condition to the City's approval of the construction plans for improvements within a proposed public park, Developer(s) will enter into an agreement with the City under which the Developer(s) agree to pay all costs to construct, operate, and

maintain all improvements constructed within the proposed public parks. Developer(s) will assign the obligations under said agreement to the HOA. The City shall have no obligation at any time to construct, operate or maintain such public parks. So long as the park improvements are constructed in compliance with the City approved construction plans, the Developer(s) shall dedicate the park and the park improvements to the City and City shall accept the park and park improvements for ownership purposes only.

4.06 **HOA Parks and Trails.** In addition to public parks, Developer(s) may establish and construct amenity centers, trails, and park facilities to be owned, operated and maintained by the HOA ("**HOA Parks**").

4.07 **City Parkland Dedication Ordinance**. Except as provided herein, Developer will dedicate public parkland or pay fees in lieu thereof in compliance with the City's Parkland Dedication requirements. Subject to the terms of this section, Developers shall receive credit toward the requirements of the City's Parkland Dedication Ordinance for land within the public parks dedicated to the City and for HOA Parks. The cumulative total of such credits shall not exceed the requirements under the City's Parkland Dedication Ordinance for 1,015 dwelling units. Notwithstanding the foregoing sentence, Developers will pay a fee in lieu in the amount of $300 per dwelling unit to the City under the Parkland Dedication in the Project, not to exceed a total of $500,000; provided, however, that the fee in lieu payment shall be made in accordance with the Parkland Dedication Ordinance beginning with the 301st dwelling unit or platted Lot.

5. CITY OBLIGATIONS

5.01 **City Obligations**. In order to facilitate the timely development of the Property:

(a) The City shall:

(i) Timely process and act upon the preliminary plat and final plats for the Property, as submitted;

(ii) Timely process and act upon all cut and fill variances on the Property administratively, provided the cut and fill slope is appropriately terraced to control erosion and sedimentation, without a requirement of a hearing or approval by the Planning and Zoning Commission or City Council;

(iii) Timely process and act upon issuance of any other permits required by the City to construct and operate the Project that comply with the Applicable Rules and this Restated Agreement; and

(iv) Timely comply with the requirements of Article 6.

(b) The City Council hereby ratifies the previously authorized and approved specific site development regulations and permitted uses for the Property as described in the PDD Development Plan.

(c) The City will timely review, process and act upon engineering and construction plans for Subdivision Infrastructure in accordance with the time frames and procedures set forth in Sections 6.17, 6.21, 6.22, 6.25, 6.26 and 6.27.

(d) The City will timely process and act upon the issuance of building permits for buildings to be constructed within a portion of the Property for which the City has approved a final plat. This authorization does not waive otherwise applicable requirements that the completed subdivision phase infrastructure be accepted by City prior to issuance of a certificate of occupancy.

(e) The City will process and act upon applications for the approval of preliminary plats and final plats, in a timely manner, if such plat complies with this Restated Agreement and the Applicable Rules.

(f) Notwithstanding any other provision of this Restated Agreement, an obligation on the part of the City to timely process and act in this Article 4 or Article 6 does not limit the City's regulatory authority to require the Developers to comply therewith.

(g) The Tessera Development Plan attached hereto as **Exhibit "B"** is approved as the concept plan for Tessera.

(h) The City will timely provide water and wastewater service to Lots within the Project, and will connect each residential unit, or building for another permitted use, to the City's water and wastewater system upon payment to the applicable fees and a Certificate of Occupancy being issued for the residential unit or building, and provide water and wastewater service for the residential unit or building on the same terms and conditions as provided to all other areas of the City.

5.02 **Landscaping in Public Right of Way**. The City agrees to enter into a "no fee" license agreement with Developers in the form attached hereto as **Exhibit "F"** for placement and maintenance of landscaping, including irrigation lines, within rights of ways dedicated to and accepted by the City; provided, however, that the City will have no obligation to maintain, repair, replace or remove landscaping and irrigation lines. Developer shall assign the license agreement and the obligation to maintain and operate the landscaping and irrigation system to the Home Owners Association.

6. UTILITY FACILITIES AND UTILITY SERVICES

6.01 **Intent of the Parties Regarding Utility Services**. As of the Effective Date, the City has sufficient water and wastewater treatment capacity to allow service connections for 490 LUEs water and wastewater service to Tessera; however, the City may not have

sufficient utility treatment capacity to meet all of the City's utility service commitments for the full build out of Tessera and the full build out of all other proposed development projects within the corporate limits of the City. The City represents that the City has rights to sufficient raw water to meet the City's overall service obligations, including, providing 2,030 LUEs of water service to the Property in accordance with the terms of this Restated Agreement. The Parties acknowledge that Tessera will build out over a number of years and that the City may decide to incrementally construct additional treatment capacity over time. Developers acknowledge that it is the City's responsibility to determine if the City's utility system needs to be expanded and how the City will expand the City's utility system to enable the City to meet its utility service obligations under this Restated Agreement. Developers further acknowledge the City's desire to retain flexibility on deciding which City utility system improvements, if any, are necessary for the City to timely meet its utility service obligations under this Restated Agreement. The City acknowledges that Developers require certainty regarding the City's plans for meeting the City's utility service obligations under this Restated Agreement, including, if necessary, the expansion or enhancement of the City's water and wastewater utility systems for the purpose of the City meeting its Utility Service obligations, including the provision of Utility Service to Tessera in accordance with the terms of this Restated Agreement. The Parties acknowledge that the delivery of an operational Utility Improvement to the City can require two or more years of planning, engineering and construction. The Parties further acknowledge the delivery of an operational Utility Improvement requires a significant financial investment.

6.02 **Communications**. The Parties will communicate and consult on a regular basis (not less frequently than once a year) regarding (i) the Developers' best estimate of the Developers' schedule for filing future preliminary plat and final plat applications and requests for PID financing during each successive two year periods so that the City will have at least a two year planning horizon for the construction of City Improvements; and (ii) the City's Utility Service Plan.

6.03 **Utility Service Obligations Defined.** This Restated Agreement provides for three types of Utility Service commitments that the City can make:

(a) General commitment to provide 2,030 LUEs of Utility Service to the Property pursuant to the terms of this Restated Agreement;

(b) Specific service commitment to deliver a specific number of LUEs of Utility Service to the Property by a specific date so that Developers may record subdivision plats subject only to the construction of Subdivision Infrastructure for such plat; and

(c) Reservation of capacity within the City's utility system at the time a subdivision plat is recorded so that upon the City's acceptance of Subdivision Infrastructure for said subdivision plat, the City will sell utility connections for Lots within said subdivision plat area.

6.04 **General Service Commitment**. Subject to Developers' compliance with Section 4.02(a)(i) or 4.02(b)(i) and satisfaction of the terms and conditions of this Article 6, the City shall timely provide the Developers and subsequent owners of land within Tessera with water and wastewater service required for the development of Tessera and, upon payment to the City of the City's applicable tap fees and impact fees, allow connections to the City's system for each LUE of service requested. Notwithstanding the foregoing sentence, the City is not obligated to provide a total of more than 2,030 LUEs of water service and 2,030 LUEs of wastewater service to Tessera. This subsection constitutes the terms and conditions of the City's general commitment of Utility Service to the Property. The City makes no representation that 2,030 LUEs of water and wastewater service will be sufficient for the full development of Tessera if such development is more intense or is otherwise materially different from the development described in the Tessera Development Plan.

6.05 **First Specific Service Commitment**.

(a) This Restated Agreement constitutes the First Developer Request For Specific Commitment of Service in the amount of 490 LUEs of water and wastewater service.

(b) This Restated Agreement constitutes the City Response to the First Developer Request For Specific Service Commitment and constitutes the City's Specific Service Commitment for 490 LUEs of water and wastewater service connections within the Property so long as Developers are in compliance with Section 4.02(a)(i) or 4.02(b)(i).

6.06 **City Utility Service Plan**. No later than one year after the City's acceptance of all the UF Phase 1 Developer Improvements, the City shall adopt and, thereafter maintain at all times, the City's plan to meet the City's overall utility service obligations, including the City's general commitment of Utility Service to Tessera in accordance with the terms of this Restated Agreement. ("**City Utility Service Plan**"). The City Utility Service Plan will include one or more of the following: a) expansion of water treatment plant No.2; b) construction of Water Treatment Plant No. 3; or c) any other Utility System improvements or enhancements approved by the City. The City may amend or modify the City Utility Plan from time to time, including, in response to Developers failing to remain in compliance with Section 4.02.

6.07 **Second and Subsequent Specific Service Commitments**.

(a) Upon the recording of subdivision plats containing at least 300 Lots and the City having issued building permits within Tessera for buildings that would use not less than 200 LUEs of water and wastewater, then Developers may request that the City provide a second specific service commitment for additional Utility Service to Tessera; provided, however, that such request shall be for no more than 400 LUEs of additional service ("**Second Developer Service Request**"). The Second Developer's Service Request must provide a date by which Developers estimate the additional Utility Service will be required to be available to the Property for the development of Tessera; provided, however, that such future date will

provide the City at least two years advance notice of when the development of Tessera will require Utility Service connections using more than the initial 490 LUEs of Utility Service.

(b) After the Second Developer Service Request, Developers may make additional Developer Service Requests for Specific Service Commitments in accordance with this subsection 6.07(b) ("**Subsequent Developer Service Request**"). Developers may submit a Developer Service Request for the City to provide a new Specific Service Commitment for additional Utility Service to Tessera when the total number of LUEs subject to a Specific Service Commitment falls below 200 LUEs. Upon the recording of a subdivision plat, the LUEs attributed to each Lot in the subdivision plat will no longer be considered subject to a Specific Service Commitment and will be considered Reserved Capacity. Subsequent Developer Service Requests may not request more than 400 LUEs and may not set a date required for the delivery of additional Utility Service that is less than 2 years from the date of the Subsequent Developer Service Request. For purposes of providing an example regarding how this subsection 6.07(b) operates, if Developers request 400 LUEs in the Second Developer Service Request (total number LUEs subject to a Specific Service Commitment would be 890 LUEs) and Developers record subdivision plats containing a total of 700 Lots (Reserved Capacity), the remaining number of LUEs subject to a Specific Service Commitment would be 190 LUEs.

(c) The Parties shall consult, if requested by any Party, regarding the details and timing relating to the Second Developer Service Request or any Subsequent Developer Service Request. It is the Parties' intent to act in good faith to work collaboratively to agree on the terms of the City's response to a Developer Service Request. Notwithstanding the Parties entering into the consultation process described in the subsection 6.07(a), the City shall formally respond in writing to a Developer Service Request within 45 days of receipt of the Second Developer Service Request ("**City Response**"). A City Response shall include one or more of the following, as applicable: (i) the number of LUEs in the City's existing utility systems that City commits to hold and allocate for use in Tessera; (ii) if the City does not commit to hold and allocate all of the LUEs requested by Developers within the City's existing utility system, then the City Response shall describe the specific enhancements, expansions and new utility facilities that the City will complete to be able to deliver the LUEs requested in the Developer Service Request by the date additional services is required as set forth in the Developer Service Request ("**City Improvements**"); and (iii) the Developer Improvements described in the attached **Exhibit "C",** if any, that must be constructed and operational for the City to deliver the additional Utility Service capacity to the Property; provided that, unless the City Response states that a required City Improvement may be delivered at an earlier date, no such City Improvement shall be required to be available within less than two years for the date of the Developer Service Request.

(d) Any City Response that identifies City Improvements to be constructed will describe each City Improvement by including the type of utility improvement and proposed capacity of the City Improvement. Additionally, the City's Response will include the City's good faith estimate for the date of the completion and operation of the City Improvement.

The description of the City Improvements shall be in reasonable detail so that, if necessary, Developers may have construction plans prepared to bid and construct the City Improvements pursuant to Article 7.

(e) The City Response shall constitute the City's determination of how the City will operationally provide the amount of water and wastewater services described in a Developer Service Request by the date additional services is required that is set forth in the Developer Service Request and shall constitute the terms and conditions of the City's Specific Service Commitment; provided, that absent agreement by the City, no date for which additional service is required in a Developer Service Request shall be less than two years from the date of said request. The City Response shall, upon delivery to Developers, be a binding and enforceable obligation of the City to (i) sell, upon request, utility connections for the number of LUEs that the City commits to hold and allocate in the City's existing utility system; and (ii) to construct and complete the City Improvements, if any, by the date additional service is required as set forth in the Developer Service Request. The City's performance of the obligations described in the preceding sentence shall be subject to Developers' compliance with Section 4.02 and this Article 6. The City acknowledges that Developers will rely on the City's Response in proceeding with the development of Tessera. The City further acknowledges that in identifying the City Improvements the City is obligated to complete the construction of the City Improvements or purchase the City Improvements pursuant to Article 7. Therefore, the City may not modify or change any aspect of the City Response without the prior notice to the Developers; provided that such changes or modifications do not extend or delay the delivery time required for a City Improvement.

(f) The City may, at any time and at the City's sole discretion, deliver to Developers a final Specific Service Commitment for the remaining number of LUEs subject to a general commitment, as described in Section 6.04. The final Specific Service Commitment shall identify the number of LUEs in the City's existing utility systems that City commits to hold and allocate for use in Tessera. Upon the issuance of the final Specific Service Commitment, Developers will not be required to submit any further Developer Service Requests.

6.08 **Update to City Response**. Based on the schedule included in the City Response, Developers may, from time to time, request the City to provide a written status report on the City's progress in completing the City Improvements, including, the design, engineering, land acquisition, funding, and construction ("**Developer Inquiry**"). The City shall provide to Developers a written response to a Developer Inquiry within ten (10) working days.

6.09 **City Non-Performance of A Specific Service Commitment**.

(a) So long as Developers are not in default under Section 4.02 and one of the following have occurred: (i) the City states in either a City Response described in Section 6.07 or an update response described in Subsection 6.08 that the City will not construct and

complete the City Improvements within the time required by Section 6.07(e); (ii) the City refuses to respond to a Developer Inquiry pursuant to Subsection 6.08 and City has not cured such breach after Developers have sent a Notice of Breach pursuant to Article 10; or (iii) the City has failed to initiate or complete one or more of the tasks described in the City Response so that the City cannot reasonably be expected to comply with the delivery date required for the number of LUEs of Utility Service requested in a Developer Service Request and City has not cured such breach after Developers have sent a Notice of Breach pursuant to Article 10, then, in addition to the pursuing any or all Article 10 remedies, Developers may notify the City of Developers' intention to construct the City Improvements pursuant to Article 7 ("**Developers' Notice of Intent to Construct City Improvements**").

(b) Within ninety (90) days of the City's receipt of the Developers Notice of Intent to Construct City Improvements, the City may notify Developers that the City has (i) revised the City Response to commit the City to hold and allocate all of the LUEs requested by Developers within the City's existing utility system, or (ii) decided to proceed with the construction of the City Improvements identified in the Developers' Notice of Intent to Construct City Improvements ("**City Notice to Proceed**"). A City Notice to Proceed is not effective unless it contains the following information: (i) the estimated date by which the City will award the construction contract; (ii) the estimated number of days to be included in the construction contract for the completion of the City Improvements; and (iii) the date by which the City intends to have the City Improvements operating. Upon the delivery to Developers of the City Notice to Proceed, the City Notice to Proceed shall replace and supersede the City Response; provided, however, the City Notice to Proceed shall not alter the number of LUE's or the required date for delivery established pursuant to Section 6.07. The schedules and commitments included in the City Notice to Proceed shall be deemed and shall constitute binding obligations of the City that Developers may enforce under this Restated Agreement.

(c) If the City does not deliver the City's Notice to Proceed in compliance with Subsection 6.09(b), then the City shall be deemed to have made the decision, at its sole discretion, to effectuate and be bound by the terms of Article 7 for the construction, use and acquisition of the City Improvements if Developers deliver to the City a notice that Developers will proceed with the design, engineering and/or construction of the City Improvements pursuant to the terms of Article 7 ("**Developer Notice to Proceed**").

(d) Neither the delivery of Developer's Notice To Proceed to the City nor the Developer's construction of the City Improvements ("Facilities" in Article 7) shall release the City of the City's obligations under this Restated Agreement to have funded and constructed such City Improvements or any future City Improvements identified by the City in any future City Response.

6.10 **Utility Facilities Defined and Described**. The Utility Facilities are the water and wastewater facilities listed and described in the attached **Exhibit "C"** that are grouped and sequenced into three phases ("**Utility Facilities Phase**"). A specific, individual water and wastewater improvement associated with a particular Utility Facilities Phase is referred to as a

"**Utility Improvement**." The specific water improvements that must be accepted by the City before the City will allow water service connections to land within a particular pressure plane ("**Water Facilities Phase**") are described in the attached **Exhibit "C"**. The three water pressure planes ("**Lower Pressure Plane**" "**Middle Pressure Plane**" or "**Upper Pressure Plane**") within Tessera are described by elevation in the attached **Exhibit "C"**. The Parties have negotiated the general alignment of water and wastewater lines and the location of other Utility Improvements, as shown on the map attached hereto as **Exhibit "D".**

6.11 **Approval of Utility Improvement Design**. The City hereby approves the design, sizing, location and route of the Utility Facilities, as described in the attached **Exhibit "C"** and **Exhibit "D",** as being adequate for the delivery of the number of water and wastewater LUEs for each Pressure Plane. The construction plans and specifications for the construction of a Developer Improvement shall be subject to approval by the City.

6.12 **Utility Improvement Construction Obligations**.

(a) **Developers**. The Utility Improvements that Developers shall construct (the "**Developer Improvements**") are described in the attached **Exhibit "C"**. Upon the construction of all of the Developer Improvements described in Utility Facilities Phase 1 and Phase 2 in the attached **Exhibit "C"** and the City's acceptance of said Developer Improvements, Developers' rights to 2,030 LUEs of water and wastewater service shall be Vested under State Law. The Developer Improvements described as UF Phase 3 in the attached **Exhibit "C"** are necessary only for the distribution of utility services within the Property and for meeting fire flow requirements within the Property.

(b) **City**. Subject to Developers compliance with Section 4.02 and this Article 6, the City is obligated to construct the City Improvements in accordance with the terms of this Restated Agreement. The City shall be solely responsible for the construction and installation of the City Improvements.

6.13 **Phasing**. Developer Improvements, or a segment of a Developer Improvement within a particular Utility Facilities Phase, may be constructed separately and dedicated separately to the City for acceptance in accordance with the procedures set forth in this Restated Agreement.

6.14 **Service Units Defined**. The size of a water meter required for any particular residential or non-residential structure shall be determined according to the City's applicable construction and plumbing standards in effect at the time that the building permit for that structure is approved, and the number of LUEs per meter to be accounted for hereunder shall be based on the City's 2008 impact fee study which is incorporated into this Restated Agreement for the limited purposes set forth in this Article.

6.15 **General Conditions For Connections to the City Utility System**.

(a) The Parties acknowledge that the City cannot deliver water and wastewater services to a Lot within Tessera unless the requisite Utility Improvements, as described in the attached **Exhibit "C"**, and requisite Subdivision Infrastructure are constructed in accordance with City approved plans and specifications, and then accepted by the City. The City acknowledges that Developers are, in proceeding with the construction of the UF Phase 1 Developer Improvements, relying on the City's performance of the City's obligation to timely provide 2,030 LUEs of water and wastewater service to the Property in accordance with the terms of this Restated Agreement,.

(b) The projected capacity of each Utility Facilities Phase have been calculated and determined by the City in consultation with the Developers and their respective consulting engineers. Notwithstanding any other provision in this Restated Agreement, the number of LUEs associated with a Pressure Plane defined in **Exhibit "C"** shall not limit the number of service connections within any Pressure Plane in the Property so long as (i) Developers have constructed all of the Developer Improvements, described as UF Phases 1 and 2 in the attached **Exhibit "C"** in accordance with the Approved Plans, (ii) Developers have constructed such Subdivision Infrastructure as necessary to meet the City's applicable requirements for a service connection and (iii) the City has accepted such Developer Improvement. If the Developers' reallocation of LUEs within the Property requires a modification to the Developer Improvements described in the attached **Exhibit "C"**, then Developers shall be solely responsible for the costs of designing, engineering and constructing the alternative Developer Improvements.

(c) If the City modifies: (i) the definition of a LUE as compared to the LUE definition incorporated into this Restated Agreement; (ii) water pressure requirements for a service connection to land within Tessera; (iii) fire flow requirements; (iv) a Utility or Developer Improvement required for the City to provide water and wastewater service to a section of Tessera; or (v) any other aspect of water and wastewater service standards, the City shall be responsible for the timely design and construction of any additional utility facilities that would be necessary for the City to meet its water and wastewater service obligations under this Restated Agreement, unless such modification by the City is in response to requests by the Developers. If the modifications described in the preceding sentence are required by federal or State Law or regulations, the Parties shall consult regarding a reasonable resolution to funding such modifications.

6.16 **Engineering and Construction Plans**. Developers shall be responsible for funding the preparation of construction plans and specifications for the Developer Improvements. The City shall be responsible for funding the preparation of construction plans and specifications for the City Improvements. City approval is required for all such plans and specifications.

6.17 **Approval of Construction Plans**. The City shall timely review, approve and sign, or disapprove and return with an explanation, as appropriate, construction plans for a Developer Improvement (the "**Plans**"). The City shall review and approve, or disapprove, on a

timely basis the Plans as they are submitted to the City. The term "timely basis" shall be interpreted in light of the development schedule, as presented to the City by Developers, provided that in no event shall the City have fewer than 30 calendar days and no more than 45 calendar days for the City's initial review of submitted Plans. If the City disapproves any submitted Plans, the City shall provide a written explanation of the reasons for such disapproval so that if the Plans are revised in accordance with City's comments, the Plans will comply with the Applicable Rules and can be approved. The City shall, on a timely basis, review and comment on updates to re-submitted Plans. The term "timely basis" in the preceding sentence shall be interpreted that in no event shall the City have fewer than 15 calendar days and no more than 25 calendar days for the City to review and provide comments to any set of Plans that have been revised or updated based on previous comments from the City. Construction plans approved by the City are referred to as the "Approved Plans."

6.18 **Use of City Property and Easements**. The City hereby consents, at no cost to the Developers, to the use of any and all appropriate and available City rights-of-way, sites or easements that may be reasonably necessary to construct a Developer Improvement, or for the Developers to perform their respective obligations under this Restated Agreement; provided, however, that the City's consent is subject to City approval of the location of a Utility Improvement within the right-of-ways and easements and avoidance of utility facilities existing in such rights of way and easements. The location of any Developer Improvements described in the attached **Exhibit "C"** on City property other than the City rights-of-way and easements shall be in the discretion of the City. Developers have secured the dedication to the City of the Public Utility Easement recorded in Document No. 2011176460, Official Public Records of Travis County, Texas ("**PUE**"). The City agrees that it will reserve and allocate sufficient space within the PUE for wet and dry utility lines necessary to serve Tessera, including, electric, telephone, gas, cable, water and wastewater. The City agrees to cooperate and support Developers' acquisition of necessary easements from third parties.

6.19 **Easement Acquisition**. The Utility Facilities and related easements are necessary and required by the City for the City to provide water and wastewater service to Tessera, and for Developers to comply with the City Rules and obtain approval for the development of Tessera. The Developers shall pay costs of the acquisition (including the City's costs of such acquisition by condemnation or conveyance in lieu thereof) of any easements or land necessary for the construction of the Developer Improvements. The City Council has found the development of Tessera in compliance with this Restated Agreement will serve a public purpose and benefit the economy of the City and the public welfare. Therefore, if Developers determine that it may be necessary for the City to use its eminent domain powers to acquire property or an interest in property to install a Utility Improvement required by the City pursuant to this Restated Agreement, Developers will make a request to the City to proceed with the acquisition of the easement in compliance with applicable law In any such event, the City proceeding to acquire such easement shall be subject to a finding by the City Council that such easement is required by the City and is necessary to accomplish a public purpose. The Parties agree to work cooperatively toward allowing the initiation of construction on a Developer Improvement on an easement being acquired by the City at the

earliest time lawfully permitted. Developers shall be responsible for all costs incurred, and for security and deposits required by the City, for or with respect to any such acquisition; provided that to the extent provided by this Restated Agreement all such costs shall be included in the cost of any such Developer Improvement for which Developers are by this Restated Agreement entitled to rebates or reimbursement by the City.

6.20 **Eminent Domain**. The City Council of the City hereby declares that: (a) there exists a public necessity for the construction of the Utility Facilities; (b) subject to all of the terms and conditions of this Restated Agreement, the Utility Facilities will be accepted by the City for ownership, operation and maintenance; (c) the City agrees, if the City Council finds the easement is necessary and required to accomplish a public purpose, to use its power of eminent domain to acquire such lands or easements in the circumstances provided herein; provided, however, the City will not use the power of eminent domain until there has been a commercially reasonable effort by Developers to negotiate and acquire the necessary property rights. If Developers have failed to obtain such lands or easements, then Developers may request the City to use its power of eminent domain to acquire said property rights. The City will act on such a request within 60 calendar days. Developers shall pay all costs associated with any such eminent domain proceedings authorized by the City. In any event, if found appropriate by the City Council for accomplishment of a public purpose, the City will timely proceed with eminent domain proceedings in order to obtain the right of possession as quickly as possible. The City will use reasonable efforts to file eminent domain proceedings within thirty days of the City's decision to proceed with eminent domain. The City will use reasonable efforts to have a special commissioners hearing held and completed within the minimum time allowed under State Law for the filing of the eminent domain proceedings.

6.21 **Changes to Approved Plans; City Inspections**. The City shall timely review, approve and sign, or disapprove and return with specific comments, as appropriate, any requested changes to Approved Plans. For purposes of reviewing changes to Approved Plans, the term "timely" shall mean ten (10) calendar days . Developers shall cooperate with the City to assure the City is provided full opportunity to inspect the work and construction of the Developer Improvements, as construction progresses, the City shall timely inspect the construction of each Utility Improvement. For purposes of inspecting construction, the term "timely" shall mean no more than three (3) business days after the day on which a request for inspection is made. The City shall provide the contractor written notice within two (2) business days of any deficiency identified during an inspection.

6.22 **Fiscal Required**. If the Parties enter into a Financing Agreement in conjunction with the formation of the PID, then this provision shall be non-applicable to any Developer Improvement funded in whole or in part with funds from the PID. With respect to the construction of any of the Developer Improvements, cash or a letter of credit in lieu of cash (such letter of credit to be in a standard form reasonably acceptable to the City) shall be deposited with the City in an amount sufficient to fund the restoration of the area of construction to a safe, pre-construction condition, including, if necessary, removing or securing facilities or other improvements, filling trenches, revegetating, and capping lines. If

construction of a Developer Improvements is abandoned and disturbed areas are not restored within 30 days after demand by the City, then the City may draw upon the fiscal security to restore such areas. If cash is posted for the fiscal, the City will keep the funds in a separate trust account identified as fiscal for the construction project.

6.23 **City's Policies and Ordinances Apply to Service Within Tessera**. From and after the final acceptance by the City of all the Developer Improvements within a particular Utility Facilities Phase, the City will provide water and wastewater service to all customers within the section of Tessera served by said Phase on the same terms and conditions as provided to water and wastewater connections within the City and in accordance with the City's policies and ordinances regarding water and wastewater service, as amended from time to time, subject only to the terms and conditions stated in this Restated Agreement. There will be no wastewater service charge associated with a water meter used only for landscaping.

6.24 **Contract and Bid Requirements**. Except as provided by Sections 4.03(m), Developers shall be solely responsible for the selection of contractors, the negotiation of construction contracts and the management of the construction contracts for the Developer Improvements, and pay all applicable plan review and construction inspection fees required by City ordinance or this Restated Agreement. All construction contracts for Developer Improvements shall require the contractor to post standard payment and performance bonds and a two-year warranty/maintenance bond.

6.25 **Satisfactory Completion of Developer Improvements**. Upon completion of construction of each of the Developer Improvements, Developers shall provide the City with final "record" drawings of the Developer Improvements. Developers' engineer shall provide a certificate of completion to the City and the City shall conduct a final inspection of the Developer Improvements within three (3) business days of receipt of said certificate of completion. The City shall, within two (2) business of conducting the final inspection provide a list of deficiencies found in the inspection so that if the deficiencies are corrected, the Developer Improvements will meet the requirements for acceptance by the City for ownership, operation and maintenance. The Developers shall be responsible for having those deficiencies remedied. Upon request, the City shall then re-inspect the Developer Improvement within three (3) business days, and if all deficiencies have been remedied to the City's satisfaction, the City shall furnish a Letter of Satisfactory Completion to Developers stating that the Developer Improvement has been constructed in substantial compliance with the Approved Plans, meets all applicable testing requirements and otherwise complies with the requirements of the City to accept the Developer Improvement for ownership, operation and maintenance.

6.26 **City Acceptance of Developer Improvements.**

(a) As a precondition to the City's final acceptance of a Developer Improvement, the following shall be delivered to the City: executed all bills paid affidavits, bills of sale, assignments, or other instruments of transfer reasonably requested by the City, in a form and

content reasonably acceptable to the City and the City Attorney, to evidence the City's ownership of same. Contemporaneously therewith, all bonds, warranties, guarantees, and other assurances of performance, record drawings, easements, project manuals and all other documentation related to the Developer Improvement to be accepted will also be delivered to the City. Utility easements for water and wastewater lines and other utility facilities within the Property may be conveyed by plat dedication or separate agreement and must be conveyed or dedicated to the City prior to the City's acceptance of the Developer Improvement.

(b) Upon the City issuing a Letter of Satisfactory Completion, Developers shall dedicate the Developer Improvement to the City. The City shall accept each such completed Developer Improvement for ownership, operation and maintenance within fifteen (15) calendar days of Developer's dedication of the Developer Improvement to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Developer Improvement. The Developers shall obtain a two year maintenance bond from the contractor and assign said bond to the City as a condition of the City's acceptance of the said Developer Improvement.

6.27 **City to Own, Operate and Maintain Developer Improvements**. From and after the time of the City's final acceptance of a Developer Improvement, the City will own, operate, and maintain each Utility Improvement as part of the City's utility system and shall be responsible for all costs associated with same. Upon the City's acceptance of all the Utility Improvements within a particular Utility Facility Phase and the City's acceptance of water and wastewater service lines within a recorded final plat, Developers shall be allowed to connect to the accepted water and wastewater service lines in such a manner to serve lots within the recorded plat; provided that City's applicable utility and connection fees are paid and that such connections meet the City's ordinance and technical requirements. The City's maintenance obligations shall be subject to the warranty and maintenance bond posted by the contractor.

7. DEVELOPER CONSTRUCTION OF CITY IMPROVEMENTS

7.01 **Applicability**. The provisions of this Article 7 shall become applicable upon the delivery to the City of the Developer Notice to Proceed, as provided in Section 6.09. The provisions of this Article 7 shall apply to the City Improvements described in the Developer Notice to Proceed and shall control the construction of said City Improvements and the City's operation, use and acquisition of same. In no event shall a Developer Improvement described in the attached **Exhibit "C"** or any Subdivision Infrastructure be considered a City Improvement for purposes of Article 7. Said City Improvements are referred to as "**Facilities**" for purposes of Article 7. In the event of a conflict between the terms of this Article 7 and any other term or provision of this Restated Agreement, the terms of this Article 7 shall control. The provisions of this Article 7 shall constitute a contract for goods and services. The terms and binding obligations of this Article 7 shall survive the termination of the Restated Agreement for any Facilities built, to be built or under construction pursuant to a Developer Notice to Proceed delivered to the City prior to the termination of the Restated Agreement.

7.02 **Construction Process, Contracts**. The Developer will take all steps necessary for construction of the Facilities including, causing construction drawings and plans and specifications to be prepared, obtaining all necessary governmental approvals, publicly inviting and advertising for construction bids, and awarding a contract or contracts with payment and performance bonds and two-year maintenance bonds after completion. Sections 6.16 through 6.21, 6.25 and 6.26 of this Restated Agreement apply to Developer's activities pursuant to this Article 7 except that the term "Facilities" shall be substituted for the term "Developer Improvements;" provided, however, in no event shall this provision ever be interpreted to apply to Subdivision Infrastructure or a Developer Improvements.

7.03 **Plans and Specifications**. Upon the delivery of the Developer Notice to Proceed to the City, the City shall be deemed to have assigned to Developers the right to use and, if necessary, modify all engineering plans and specifications pertaining to the City Improvements as then owned or held by the City; provided, however, that Developers shall not assume or be deemed to have assumed financial responsibility for the payment of any fees due or owing with respect to said plans and specifications. The City shall cause the delivery of such plans, as the City may have or control, to Developers within ten (10) working days of Developers' request for said plans. If the City has no plans and specifications, Developers shall cause such plans and specifications to be prepared. The plans and specifications for the Facilities shall be prepared by either the City's engineers or a qualified, registered professional engineer. Plans and specifications for the Facilities are subject to the approval of the City and the City's Engineer, and such approval, which shall not be unreasonably withheld or delayed, is required to be obtained by Developers prior to construction.

7.04 **Payment for Construction of Facilities**. Developer shall make, in a timely fashion, all payments on the contracts awarded by it for the construction of the Facilities. Developer shall, prior to making any payment, provide copies of all invoices and certifications recommending payment to the City.

7.05 **City Acceptance of Facilities**. Upon the City issuing a Letter of Satisfactory Completion, Developers shall tender delivery of the Facilities to the City for control, operation and maintenance. The City shall accept each said Facility control, operation and maintenance within fifteen (15) calendar days of said tender of delivery to the City. The City shall not unreasonably deny, delay, or condition its acceptance of such Facilities. The Developers shall obtain a two year maintenance bond from the contractor and assign said bond to the City as a condition of the City's acceptance of the said Facility.

7.06 **Operation and Maintenance of Facilities**. The City shall, upon acceptance of the Facilities take possession of the Facilities and assume full responsibility for the operation and maintenance of such Facilities. However, the City shall not own the Facilities constructed by Developer until the Facilities have been purchased and conveyed to the City by Developer as provided herein. The City shall operate and maintain the Facilities in good order and condition and to the extent reasonably practical, in a manner that will not interfere with the delivery of utility services for new service connections. Until such time as the Facilities are

purchased by the City, the City shall maintain adequate insurance or self-insurance to repair or replace the Facility should they be damaged or injured by insurable casualty risks. All such insurance proceeds shall be used by the City to repair and restore the Facilities to maintain the delivery of the LUEs quantified in the Developer Service Request relating to the Facilities. The costs of such insurance shall be borne by the City. Until such time as the City has purchased the Facilities form the Developers, the City shall require the insurer to name Developers as "additional insureds" under all insurance policies relating to the Facilities.

7.07 **Purchase of Facilities by City**. Within thirty (30) days of the City's acceptance of the Facilities pursuant to Section 7.05 Developers shall deliver notice to the City stating that the Developers are ready, able and willing to sell and convey the Facilities to the City pursuant to this Article 7. The City shall provide a written response to said notice stating whether the City is willing to proceed with the Purchase of the Facilities. Such purchase shall be made and close within one (1) year of Developers' notice of being ready willing and able to sell and convey the Facilities. The purchase price shall be the Reimbursable Costs, as defined below. The City shall pay all closing costs.

7.08 **Limitation of Source of Payment**. The City's obligation to purchase the Facilities under this Restated Agreement is limited to funds from water and wastewater rates, impact fees, other fees and other revenues collected by the City from the City's water and wastewater utility systems, including, water and wastewater utility revenue bonds or obligations (collectively "**Utility Revenue**"). No obligation of the City created pursuant to this Article 7 shall be payable from taxes or other money of the City other than the Utility Revenues which are actually collected by the City; provided, however, the City may, in its sole discretion, use any source of funding it chooses. If the City issues utility revenue bonds after the delivery of the Developer Notice to Proceed, then such bonds will contain funds for the purpose of fully reimbursing the Reimbursable Costs to Developers.

7.09 **Conveyance of Facilities**. Concurrently with the purchase of the Facilities by the City, the Developer shall transfer and convey title to the Facilities to the City by special warranty deed or other appropriate instrument, free and clear of all liens, claims, encumbrances, options, charges, assessments, restrictions, limitations, and reservations, including liens for ad valorem taxes for past and current years, payments due to construction contractors, laborers, or materialmen. The Developer shall provide such proof of title and proof that no such liens, claims, and encumbrances exist as may reasonably be required by the City. The conveyance or conveyances shall include all easements where the collection, distribution, and drainage systems are located (where such easements have not been dedicated to the public) and which are necessary to own, operate, and maintain the Facilities, and fee simple title to any sites, together with the necessary right-of-way thereto, and all licenses, franchises, and permits for the Facilities. The Developer shall also assign in writing all of its contractors' and materialmen's warranties and guaranties relating to the Facilities, otherwise, the City shall accept the Facilities on an "as is where is" basis without any warranty from Developers.

7.10 **Reimbursable Costs**. "Reimbursable Costs" means the documented dollar amount actually expended for constructing the Facilities, provided the bids and change orders are approved in advance by the City Manager; provided, the City Manager shall not unreasonably deny, delay, or condition its acceptance of such Facilities. The Reimbursable Costs shall also include the reasonable, total cost of the following:

(i) the surveying costs;

(ii) the cost of soils and materials testing;

(iii) the engineering fees relating to the Facilities;

(iv) advertising and other costs associated with public bidding and award of construction contracts;

(v) the documented cost of required easements, lots, sites and rights-of-way located outside of the Property, but not including any easement or right-of-way required on any land within the Property;

(vi) Construction management fee equal to four percent (4%) of the total of the other components of the Reimbursable Costs; and

(vii) any other necessary out-of-pocket costs expended in connection with constructing and installing the Facilities;

provided that all such sums and amounts shall be reasonably required for the Facilities and documented to and approved by the City Manager which approval may not be unreasonably denied, delayed or conditioned. If the City Manager does not approve of a cost, the City Manager shall provide a written explanation of the basis for not approving such cost within fifteen (15) calendar days of Developer's submittal of said cost for approval. If the City Manager refuses to approve a bid, change order, or cost described above, Developers may appeal such determination to the City Council. The City will schedule a hearing on the appeal no later than the next regularly scheduled City Council meeting for which timely notice may be given. If the City and Developer do not agree upon the costs being appealed, then any Party may send a Notice of Breach and proceed with Article 10 remedies.

7.11 **Failure to Purchase by Initial Closing Date**. If the City does not purchase the Facilities within one (1) year of Developers' notice to the City pursuant to Section 7.05, then Developers may pursue the remedies set forth in Article 10 of the Restated Agreement. Upon the City's failure to purchase the Facilities within the one (1) year period, the Reimbursable Costs shall bear a per annum interest equal to the prime rate published in the Wall Street Journal plus 2.5%, accruing on a monthly basis. The initial rate shall be calculated based on the prime rate published in the Wall Street Journal on the 366th day following Developers' notice pursuant to Section 7.05 or the first business thereafter. The interest rate will adjust on each subsequent anniversary date. Interest will accrue beginning on

the 366th day following Developers' notice pursuant to Section 7.05. Interest shall accrue until title to the Facilities is conveyed to the City.

8. PARKS AND HOME OWNERS ASSOCIATION

8.01 **Home Owners Association To Be Established**. Developers will create one or more home owners associations for the Property (collectively the "**Association**"), and shall establish bylaws, rules, regulations and restrictive covenants (collectively the "**Association Regulations**") to assure the Association performs and accomplishes the duties and purposes required to be performed and accomplished by the Association pursuant to this Restated Agreement. The owner of each Lot within the Property shall be required to be a member of the Association, and unpaid dues or assessments shall be and constitute a lien on the lot for which they are assessed. The Association Regulations will establish periodic Association dues and assessments, to be charged and paid by the lot owners in within the Property, that are and will be sufficient to maintain (i) the private streets within the Property, if any, (the "**Private Streets**"); (ii) all landscaping, upgraded street lights, and enhanced signage within the right-of-way or median of any street or roadway ("**Street Landscaping**"); (iii) all greenbelts and natural buffer areas ("**Open Space**"); (iv) any part or portion of the Property that is dedicated to the Association (the "**Common Area**"); and (v) public parks established within the Property ("**Parks**"). The Association Regulations will require the periodic dues and assessments to be increased from time to time as necessary to provide the funds required for the maintenance of the Private Streets, Street Landscaping, Open Space, the Common Area and Parks, and to provide funds required for the management and operation of the Association.

8.02 **Dues and Assessments**. The Association dues and assessments required to be established, maintained and collected by the Association pursuant to this Restated Agreement shall be in addition to, and not in lieu of, any and all other taxes, fees, charges and assessments that will be applicable to the Property.

8.03 **City Approval of Documents and Covenants**. The Certificate of Formation and Association Regulations, and the applicable restrictive covenants for each Section of the Property shall require the Association to operate maintain, repair and refurbish the Private Streets, Street Landscaping, Open Space, the Common Area and Parks, and to assess and collect sufficient dues and fees to fund and pay the cost and expenses for the Association maintaining, cleaning, repairing and refurbishing each such areas. The articles of incorporation and bylaws for the Association and the restrictive covenants applicable to the each Section or Phase of the Property shall be subject to approval by the City, which approval shall not be unreasonably denied, delayed or conditioned and shall authorize the City to enforce the obligations of the Association to: (i) maintain, clean, repair and refurbish the Private Street, Landscaping, Open Space, the Common Area and Parks; and (ii) assess and collect sufficient fees and charges to fund such maintenance, cleaning, repair and refurbishment duties and responsibilities.

9. ASSIGNMENT OF COMMITMENTS AND OBLIGATIONS; SUCCESSORS

9.01 **Assignment of Developer Rights**. The Developer's rights and obligations under this Restated Agreement may be assigned in whole or part, to persons purchasing all of the Property or a part of the Property but not to an individual purchaser of lots within a recorded final plat. In the event Developer(s) assign all of their respective rights under this Restated Agreement in conjunction with the conveyance of any unplatted portion of the Property, a written assignment of developer status must be filed of record in the Official Public Records of Travis County, Texas in order to be effective. Any assignment of Developer's rights and obligations hereunder will not release Developer(s) of their respective obligations under this Restated Agreement for the assigned portion of the Property until the City has approved the written assignment; provided, however, the City shall not unreasonably deny, delay, or condition its approval of the assignment.

9.02 **Lot Conveyance Not an Assignment**. The mere conveyance of a lot or any portion of the Property without a written assignment of the rights of Developer shall not be sufficient to constitute an assignment of the rights or obligations of Developer hereunder, unless specifically provided herein. In order for any assignment to be effective, it shall be made in writing and filed of record in the Official Public Records of Travis County, Texas.

9.03 **Agreement Binding on Assigns**. This Restated Agreement shall be binding upon the Parties, their grantees, successors, assigns, or subsequent purchaser. In the event of an assignment of fee ownership, in whole or in part, of the Property by Developer, only the grantees and assignees and then current owners of any portion of the Property so assigned shall be liable under this Restated Agreement for any subsequent default occurring after the conveyance and affecting only the portion or portions of the Property so assigned. Any reference to Developers or City shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Restated Agreement shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

10. BREACH, DEFAULT, REMEDY, AND TERMINATION RIGHTS

10.01 **Default Generally**. If any Party breaches the terms of this Restated Agreement and fails to cure such breach after receipt of a Notice of Breach pursuant to Section 10.02, such breach shall be an event of default. In that event, the non-defaulting Party to this Restated Agreement may pursue the remedies described in Section 10.03; provided that, if Developers abandon the Project as provided in Section 4.03(j), the City may, in its sole discretion, give written notice of abandonment to Developers and this Restated Agreement shall be terminated. Abandonment shall not be subject to cure without the express written agreement of the City Council.

10.02 **Notice and Opportunity to Cure**.

(a) No Party shall be deemed to be in default hereunder until i) receipt from another party of a written notice of breach that specifies the nature of the breach, including the provision of the Restated Agreement that has been breached ("**Notice of Breach**"); and ii) the passage of thirty (30) days after receipt of the Notice of Breach without cure of the breach. If the cure of the breach requires more than thirty (30) days and the breaching Party has begun to cure the breach, then the breaching party shall be deemed to have cured the breach so long as the breaching party diligently, continuously and timely cures said breach. Upon the passage of thirty (30) days without cure of the breach, such Party shall be deemed to have defaulted for purposes of this Restated Agreement and the non-defaulting Party may pursue the remedies allowed under Article 6 or Section 10.03 of this Agreement. A Notice of Breach delivered to the City shall be deemed to fulfill the notice requirements set forth in Section 11.07 of the City Charter.

(b) In no event shall the preparation and delivery to Developers of any of the following ever be considered or deemed to require more than thirty days to cure: (i) the City Utility Plan, (ii) a City Response, (iii) a City Notice To Proceed, (iv) review comments for Plans submitted to the City pursuant to Section 6.17; (v) review comments for Approved Plans submitted to the City pursuant to Section 6.21; (vi) any City obligation described in Section 6.27, (vii) final inspection report pursuant to Section 6.25; (viii) City acceptance of a Developer Improvement pursuant to Section 6.26; (ix) City review, inspection or action relating to Subdivision Infrastructure pursuant to Section 5.01; (x) City review, inspection or action relating to a Facility pursuant to Sections 7.02, 7.03 and 7.05; and (xi) a payment due under Article 7.

10.03 **Remedies.**

(a) **City** If Developers fail to cure a breach after receiving a Notice of Breach from the City, the City may terminate this Restated Agreement or may pursue all available legal and equitable remedies regarding said default, including specific performance.

(b) **Developers.** If the City fails to cure a breach under any provision of this Restated Agreement, other than an Article 7 obligation, Developers may terminate this Restated Agreement and pursue all available legal and equitable remedies, including specific performance and mandamus regarding said default; provided, however, that legal actions shall not include the recovery of damages against the City. If the City fails to cure a breach under any provision of Article 7 after receiving Notice of Breach from another Party, then such non-defaulting party may terminate this Restated Agreement and pursue all available legal and equitable remedies, including specific performance and mandamus regarding said default; provided, however, that the recovery of damages shall be limited to the collection of money due and payable to Developer(s) pursuant to Article 7.

10.04 **Stipulations**.

(a) The Parties each waive all claims for special, consequential and exemplary damages. Developers further waive any and all claims for damages whatsoever, save and except only, for Reimbursable Costs that may become payable pursuant to Article 7. Subject to the limitation of the award of damages set forth in Section 10.03(b) above and this Section 10.04, the City waives its governmental immunity to suit with respect to any action relating to the interpretation and enforcement of this Restated Agreement. Nothing in this section shall waive any claims, defenses or immunities that the City may have with respect to suits filed by persons or entities other than a Party to this Agreement. The act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity or under this Restated Agreement.

(b) The Parties stipulate that (i) the City will provide water and wastewater service within Tessera; (ii) Developers waive any and all right to recover monetary damages caused by the City's default hereunder, save and except only the recovery of Reimbursable Costs that may be and become payable by the City under Article 7; and (iii) lacking such remedies at law, Developers will be irreparable harmed by the City's default. Therefore, the remedies of injunction or mandamus are necessary for the Developers to enforce the rights and obligations set out in Articles 5, 6 & 7 of this Restated Agreement, including those specifically identified in Subsection 10.02(b), because no adequate remedy at law exists. In the event of a default in the performance of any obligation identified in Subsection 10.02(b), it is agreed that an expedited hearing on the matter is appropriate and needed, and that in the event the Court is willing to issue an injunction, other equitable relief or a writ of mandamus, the bond amount required in connection with such injunction, equitable relief or writ of mandamus should not exceed $1,000.00.

(c) Except as provided in this Section 10.04(c), the City shall not be liable to the Developers, or to any other person or legal entity, for any monetary award, damages or costs pursuant to this Restated Agreement. Developers waive any and all present or future claims for damages; save and except only that if Article 7 becomes applicable and Developers construct one or more of the Facilities, the City shall be liable to the Developers for the Reimbursable Costs.

10.05 **Material Agreement**. The following are material inducements to Developers for entering into this Restated Agreement: (i) the terms of this Article 10; (ii) the City's agreement that the City's obligations under Articles 5, 6 and 7, including those identified in Subsection 10.02(b), are enforceable as set out in Section 10.03; and (iii) the stipulations set forth in Section 10.04.

10.06 **Waiver**. Any failure by a Party to insist upon strict performance by another Party of any provision of this Restated Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right to insist upon strict compliance with all terms of this Restated Agreement. In order to be effective as to as to the Developers, any Developer waiver of a City breach or default under this Restated Agreement must be in writing and signed by an officer of the Developer and a written waiver

will only be effective as to the specific breach or default and as to the specific period of time set forth in the written waiver. In order to be effective as to the City, any City waiver of a Developer breach or default under this Restated Agreement must be in a writing and authorized by the City Council and signed by the City Manager or the Mayor, and a written waiver will only be effective as to the specific breach or default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent breach or default, or of the right to require performance of any provision of this Restated Agreement in the future. Except as explicitly provided in this Restated Agreement, nothing in this Restated Agreement shall be deemed a waiver by the City of any applicable state and federal law.

10.07 **Attorney's Fees.** A Party shall not be liable to another Party for attorney fees or costs incurred in connection with litigation between the Parties, including, but not limited to, any action, process or proceeding in which a Party seeks to obtain a remedy from the other Party, including appeals and any post-judgment proceedings regarding any such matter; provided that Sections 4.03(g), 6.21. 6.22 and 11.07(d) shall be and remain in full force and effect.

10.08 **Post Termination Rights**.

(a) Upon the termination of this Restated Agreement, this Restated Agreement will be of no further force and effect, except that such termination will not affect the City's obligation to: (a) allow connections, subject to City Rules, to the City's systems within each pressure zone of Tessera for which (i) the Subdivision Infrastructure has been constructed and accepted by the City; and (ii) the respective phase of the Utility Facilities described in **Exhibit "C"** has been constructed and accepted by the City; and (b) provide water and wastewater service in the amount of up to 2,030 LUEs if Developers have constructed all of the UF Phase 1 and UF Phase 2 Developer Improvements and the City has accepted such Developer Improvements subject to compliance with the City Rules regarding connections to the City's utility system.

(b) For any portion of the Property having not received a final plat prior to the termination of this Restated Agreement or for which all Subdivision Infrastructure has not been constructed and installed by Developer and accepted by the City, the City shall have no obligation to complete the infrastructure and such obligation to install and construct infrastructure shall be the obligation of the person or person(s) requesting water or wastewater service according to the City Rules in effect at the time of the request. The City shall have no obligation to construct water or wastewater utilities within the Property; provided, however, the UF Phase 1 and UF Phase 2 Developer Improvements have been accepted by the City, then the City shall be obligated to complete all City Improvements identified in a City Response issued by the City prior to the termination of this Restated Agreement.

(c) Upon the expiration or termination of this Restated Agreement, this Restated Agreement will be of no further force and effect; except that such expiration or termination

will not affect any right or obligation arising (i) under State Law; (ii) from Project Approvals granted during the Term of this Restated Agreement; and (iii) for completion of infrastructure for approved final platted section(s).

10.09 **Termination By Agreement**. This Restated Agreement may be terminated or amended as to all of the Property at any time by mutual written consent of the City and Developers, or may be terminated or amended as to a portion of the Property by the mutual written consent of the City and the Developer, or Developer's grantees and assignee, as to that portion or portions of the Property affected by the amendment or termination provided that, in such event, the termination of this Restated Agreement shall not limit, lessen, impair or modify the obligations of the Parties pursuant to, or for or with respect, to the Tessera on Lake Travis Public Improvement District, Tessera on Lake Travis Public Improvement District Financing Agreement, or any lien, assessment, document or obligation created for or with respect to the PID Bonds.

11. MISCELLANEOUS PROVISIONS

11.01 **Force Majeure**.

(a) The term "force majeure" shall mean, without limitation, acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas or any civil or military authority, including the City; insurrections, riots, epidemic, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people; civil disturbances; explosions, breakage, or accidents to machines, pipelines, or canals; or other causes not reasonably within the control of the party claiming such inability.

(b) If, by reason of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Restated Agreement, then such party shall give written notice of the full particulars of such force majeure to the other party within thirty (30) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed, except as hereinafter provided, but for no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

11.02 **Notices**. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received on the earlier of (i) actual receipt by mail, Federal Express or other delivery service, fax or hand delivery; (ii) three (3) business days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Purchaser, as the case may be, at the address stated in Section l; or (iii) one business day after being sent by email.

Any notice mailed to the City shall be addressed:

City of Lago Vista
Attn: City Manager
P.O. Box 4727 (mail)
5803 Thunderbird (hand delivery)
Lago Vista, Texas 78645
Fax (512) 267-7070

With copy to:

McKamie & Krueger
223 W. Anderson Lane, Suite A105
Austin, Texas 78752
Telephone (512) 323-5778
Fax (512) 323-5773

Any notice mailed to the Developer and Phase I Developer shall be addressed:

Hines Interests Limited Partnership
Attention: Mark Cover
811 Main St, Suite 4100
Houston, Texas 77008
Telephone (713) 237-5660
Fax (713) 237-5657

with copies to:

Hines Interests Limited Partnership
Attention: Duke Kerrigan
515 Congress, Suite 1425
Austin, Texas 78701
Telephone (512) 652-0590
Fax (512) 652-0598

Hines Interests Limited Partnership
Attention: Rob Witte
2200 Ross, Suite 42W
Dallas, Texas 75201
Telephone (972) 716-2925
Fax (972) 934-1460

Munsch, Hardt Kopf & Harr, P.C.
Attn: Robert Kleeman
401 Congress Avenue, Suite 3050

Austin, Texas 78701
Telephone (512) 391-6115
Fax (512) 482-8932

Any party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

11.03 **Multiple Originals**. The Parties may execute this Agreement in one or more duplicate originals, each of equal dignity.

11.04 **Entire Agreement**. This Restated Agreement, together with any exhibits attached hereto, constitutes the entire agreement between Parties with respect to its subject matter, and may not be amended except by a writing signed by all Parties with authority to sign and dated subsequent to the date hereof. There are no other agreements, oral or written, except as expressly set forth herein.

11.05 **Recordation**. A Memorandum of Agreement for this Restated Agreement may be recorded in the Official Public Records of Travis County, Texas.

11.06 **Governing Law**. This Restated Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In the event of partial invalidity, the balance of the Restated Agreement shall remain in full force and effect. This Restated Agreement is performable in Travis County, Texas.

11.07 **Cooperation and Third-Party Litigation**.

(a) The Parties agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder.

(b) In the event of any third party lawsuit or other claim relating to the validity of this Restated Agreement or any actions taken by the Parties hereunder, Developer and City agree to cooperate in the defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Restated Agreement. The filing of any third party lawsuit relating to this Restated Agreement or the development of the Property will not delay, stop or otherwise affect the development rights or the City's processing or issuance of any approvals or permits pursuant to this Restated Agreement, unless otherwise required by a court of competent jurisdiction.

(c) The City agrees to cooperate, as appropriate, at no cost to the City, with Developer(s) in connection with any waivers or approvals Developer(s) may be required to obtain from other governmental authorities in connection with the development of Tessera; provided, however, the City shall not be obligated to cooperate if Developer(s) is challenging the applicability or legality of the rule with regard to which the waiver or approval is sought.

(d) In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken by the Parties pursuant to this Agreement, Developers and the City will cooperate in the defense of such suit or claim, and use their respective best efforts to resolve the suit or claim without diminution of their respective rights and obligations under this Agreement. The City's participation in the defense of such a lawsuit is expressly conditioned on the discretion of the City Council. The filing of any third party lawsuit relating to this Agreement or the development of Tessera will not delay, stop or otherwise affect the development of the Developer Improvements or the City Improvements, or the City's processing or issuance of any approvals for the Developer Improvements, unless otherwise required by a court order. Developers shall reimburse the City for any costs, expenses and fees reasonably incurred by the City by reason of any claim or litigation filed by a third person; provided, however, if the third party litigation alleges that the City did not properly authorize the execution of this Agreement, then Developers shall have no responsibility to reimburse the City for any costs, expenses or fees relating to such claim.

11.08 **Construction of Agreement**. All exhibits attached to this Restated Agreement are incorporated into and made a part of this Restated Agreement for all purposes. The paragraph headings contained in this Restated Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice-versa. Each of the Parties has been actively and equally involved in the negotiation of this Restated Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Restated Agreement or its exhibits. This Restated 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.

11.09 **Mortgagee Protection**.

(a) This Restated Agreement will not affect the right of Developer(s) to encumber all or any portion of the Property by mortgage, deed of trust, assessment lien or other instrument to secure financing for the Project. The City understands that a lender, prospective lender, bondholder or prospective bondholder providing financing for the Project (collectively "**Lender**") may require interpretations of or modifications to this Restated Agreement and agrees to cooperate with Developer(s) and its Lenders' representatives in connection with any reasonable requests for interpretations or modifications. The City agrees not to unreasonably condition, withhold or delay its action upon any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Restated Agreement. The City agrees as follows:

(i) The City will, upon written request of a Lender given in compliance herewith, provide the Lender with a copy of any written notice of default given to Developer under this Restated Agreement within ten (10) days of the date such notice is given to Developer.

(ii) In the event of default by Developer under this Restated Agreement, a Lender may, but will not be obligated to, cure any default during any cure period extended to Developer, either under this Restated Agreement or under the notice of default.

(iii) Any Lender who comes into possession, control or ownership of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Restated Agreement and the PID Bonds. Any person or entity who comes into possession, control or ownership of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Restated Agreement and the PID Bonds; provided that, excluding assessments made pursuant to the PID Bonds, such Lender, person or entity will not be liable for any defaults or monetary obligations of Developer arising prior to the acquisition of title; provided further that such Lender, person or entity will not be entitled to obtain any permits or approvals with respect to that property until all delinquent fees and other obligations of Developer under this Restated Agreement that relate to the property in question have been paid and/or performed.

(b) Within thirty (30) days of written request by a Party given in accordance with this Restated Agreement, the non-requesting Parties will execute and deliver to the requesting Party a statement certifying that: (a) this Restated Agreement is unmodified and in full force and effect or, if there have been modifications, that this Restated Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) there are no current uncured defaults under this Restated Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested.

11.10 **Right to Continue Development**.

(a) In consideration of Developers' agreements hereunder, the City agrees that, during the term of this Restated Agreement, it will not impose or attempt to impose: (a) any moratorium on building or development within the Property, or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plans, final plats, site plans, building permits, certificates of occupancy or other necessary approvals. No City-imposed moratorium, growth restriction, or other limitation affecting the rate, timing or sequencing of development or construction of all or any part of the Project will apply to the Land if such moratorium, restriction or other limitation conflicts with this Restated Agreement or would have the effect of increasing Developers' obligations or decreasing Developers' rights and benefits under this Restated Agreement. This Restated Agreement on the part of the City will not apply to temporary moratoriums uniformly imposed throughout the City and ETJ due to an emergency constituting an imminent threat to the public health or safety, provided that the temporary moratorium continues only during the duration of the emergency.

(b) Developers, their respective grantees, successors, assigns or subsequent purchasers obligation to complete infrastructure necessary to comply with this Restated Agreement and Applicable Rules shall be an obligation running with the land as more

particularly set forth herein which shall survive termination of this Restated Agreement and be enforceable at the discretion of the City.

11.11 **Severability, Equivalent Substitute Obligation**. If any provision of this Restated Agreement is held to be illegal, invalid, or unenforceable by a final judgment entered by a court of competent jurisdiction under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Restated Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each provision of this Restated Agreement that is illegal, invalid, or unenforceable, there be automatically added as a part of this Restated Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable that will most nearly preserve each Party's overall contractual benefit under this Restated Agreement. If any Party is unable to meet an obligation under this Restated Agreement due to a court order invalidating all or a portion of this Restated Agreement, preemptive state or federal law, an imminent and bona fide threat to public safety that prevents performance or requires different performance, or subsequent conditions that would legally excuse performance under this Restated Agreement, the Parties agree to revise this Restated Agreement to provide for an equivalent substitute right or obligation as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid and enforceable, or other additional or modified rights or obligations that will most nearly preserve each Party's overall contractual benefit under this Restated Agreement.

11.12 **Authorization**. The City certifies, represents, and warrants that the execution of this Restated Agreement has been duly authorized and that this Restated Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Developers certify, represent and warrant that the execution of this Restated Agreement is duly authorized in conformity with their respective authority.

11.13 **Certificate of Compliance**.

(a) Within thirty (30) days of written request by any Party requesting a statement of compliance with this Restated Agreement, the other Party will execute and deliver to the requesting Party a statement certifying that:

(i) this Restated Agreement is unmodified and in full force and effect or, if there have been modifications, that this Restated Agreement is in full force and effect as modified and stating the date and nature of each modification;

(ii) there are no current uncured defaults under this Restated Agreement, or specifying the date and nature of each default; and

(b) Any other information that may be reasonably requested. The City Manager will be authorized to execute any requested statement on behalf of the City; provided such statement relates only to general information about Tessera or (i) and (ii) above.

11.14 **No Third Party Beneficiary**. The provisions of this Restated Agreement are and will be for the benefit of the Parties only and are not for the benefit of any third party and, accordingly, no third party shall have the right to enforce the provisions of this Restated Agreement.

11.15 **Exhibits**. All Exhibits and other documents attached to this Restated Agreement are incorporated into this Restated Agreement for all purposes. The exhibits to this Restated Agreement are as follows:

Exhibit A – Metes and Bounds Description of the Property
Exhibit B – Tessera Development Plan
Exhibit C – Description of Utility Facilities
Exhibit D –Map of water and wastewater lines and the location of other Utility Improvements
Exhibit E – Phase 1 Development Area and Description of the Initial Entrance Road
Exhibit F –Right of Way License Agreement Form

EXECUTED in multiple originals as of the date set out below and effective as of August 16, 2012.

CITY OF LAGO VISTA, TEXAS

Attest:

By: _____
Name: Christina Buckner
Title: City Secretary
Date: 8/16/12

By: _____
Name:
Title: Mayor
Date: 8/16/12

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 16th day of August, 2012, by Randy Kruger, the Mayor of the **CITY OF LAGO VISTA, TEXAS**, a home rule city, on behalf of said city.

_____
NOTARY PUBLIC, State of Texas
My Commission Expires: 11-30-12

CHRISTINA M. BUCKNER
MY COMMISSION EXPIRES
November 30, 2012

DEVELOPERS:

HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP,
a Texas limited partnership

By: Hines Lake Travis Land GP LLC,
a Delaware limited liability company, its general partner

By: Hines Interests Limited Partnership,
a Delaware limited partnership, its sole member

By: Hines Holdings, Inc., a Texas corporation,
its general partner

By: _____
Name: Mark A. Cover
Title: Senior Managing Director
CEO - Southwest Region

STATE OF TEXAS §
Harris §
COUNTY OF ~~DALLAS~~ §

This instrument was acknowledged before me on August 17, 2012, by Mark A. Cover, Senior Managing Director CEO - Southwest Region of Hines Holdings, Inc., a Texas corporation, on behalf of said corporation in its capacity as general partner of Hines Interests Limited Partnership, a Delaware limited partnership, on behalf of said limited partnership, in its capacity as sole member of Hines Lake Travis GP LLC, a Delaware limited liability company, on behalf of said limited liability company, in its capacity as general partner of Hines Lake Travis Land Limited Partnership, a Texas limited partnership, on behalf of said limited partnership.

Adele T. Kline
Notary Public, State of Texas
My Commission Expires: 10-10-15

ADELE T KLINE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 10/10/15

Hines Lake Travis Land II Limited Partnership
a Texas limited partnership

By: Hines Lake Travis GP, LLC, a Delaware limited liability company, its general partner

By: Hines Interests Limited Partnership, a Delaware limited partnership, its sole member

By: Hines Holdings, Inc., a Texas corporation, its general partner

By: _____
Mark A. Cover
Senior Managing Director
CEO - Southwest Region

Date: _____

THE STATE OF TEXAS §
Harris §
COUNTY OF ~~DALLAS~~ §

This instrument was acknowledged before me on August 10, 2012, by Mark A. Cover, Senior Managing Director CEO - Southwest Region Hines Holdings, Inc., a Texas corporation, on behalf of said corporation in its capacity as general partner of Hines Interests Limited Partnership, a Delaware limited partnership, on behalf of said limited partnership, in its capacity as sole member of Hines Lake Travis GP LLC, a Delaware limited liability company, on behalf of said limited liability company, in its capacity as general partner of Hines Lake Travis Land Limited Partnership, a Texas limited partnership, on behalf of said limited partnership.

ADELE T KLINE
NOTARY PUBLIC
STATE OF TEXAS
MY COMM. EXP. 10/10/15

Adele T. Kline
NOTARY PUBLIC, State of Texas
My Commission Expires: 10/10/15

EXHIBIT "A"
TO RESTATED DEVELOPMENT AGREEMENT

METES AND BOUNDS DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION
877.263 ACRES

ALL THAT CERTAIN TRACT OR PARCEL OF LAND SITUATED IN THE J.S. PEACOCK SURVEY NO. 202, ABSTRACT NO. 2469, TEXAS-MEXICAN RAILWAY CO. SURVEY NO. 201, ABSTRACT NO. 2291, A. SYLVESTER SURVEY NO. 202, ABSTRACT NO. 2524, WILLIAM BRANDON SURVEY NO. 1, ABSTRACT NO. 47 AND F. F. FAUBION SURVEY NO. 97, ABSTRACT NO. 2541, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT OR PARCEL OF LAND DESCRIBED IN A DEED TO HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP, RECORDED IN DOCUMENT NUMBER 2007077705, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REBAR WITH YELLOW PLASTIC CAP STAMPED "HAYNIE CONSULTING" FOUND AT THE NORTHEASTERLY CORNER OF SAID HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP TRACT, SAID POINT BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF F.M. ROAD NO. 1431;

THENCE ALONG THE EASTERLY LINE OF SAID HINES LAKE TRAVIS LAND LIMITED PARTNERSHIP TRACT THE FOLLOWING 40 COURSES:

1. SOUTH 33 DEGREES 12 MINUTES 06 SECONDS WEST A DISTANCE OF 618.10 FEET;
2. SOUTH 26 DEGREES 57 MINUTES 39 SECONDS EAST A DISTANCE OF 452.84 FEET;
3. SOUTH 16 DEGREES 52 MINUTES 30 SECONDS EAST A DISTANCE OF 366.98 FEET;
4. SOUTH 05 DEGREES 20 MINUTES 44 SECONDS EAST A DISTANCE OF 327.61 FEET;
5. SOUTH 16 DEGREES 44 MINUTES 09 SECONDS EAST A DISTANCE OF 367.91 FEET;
6. SOUTH 10 DEGREES 12 MINUTES 56 SECONDS WEST A DISTANCE OF 672.26 FEET;
7. SOUTH 35 DEGREES 14 MINUTES 57 SECONDS WEST A DISTANCE OF 659.99 FEET;
8. SOUTH 16 DEGREES 48 MINUTES 54 SECONDS WEST A DISTANCE OF 928.89 FEET;
9. SOUTH 53 DEGREES 47 MINUTES 38 SECONDS WEST A DISTANCE OF 531.05 FEET;
10. SOUTH 21 DEGREES 55 MINUTES 01 SECONDS WEST A DISTANCE OF 1249.64 FEET TO A 1/2" REBAR FOUND;
11. SOUTH 27 DEGREES 23 MINUTES 17 SECONDS WEST A DISTANCE OF 572.56 FEET TO A 1/2" REBAR FOUND;
12. SOUTH 27 DEGREES 14 MINUTES 59 SECONDS WEST A DISTANCE OF 192.63 FEET TO A 1" REBAR FOUND;
13. SOUTH 74 DEGREES 33 MINUTES 08 SECONDS WEST A DISTANCE OF 421.27 FEET;
14. NORTH 89 DEGREES 32 MINUTES 10 SECONDS WEST A DISTANCE OF 88.90 FEET;
15. SOUTH 73 DEGREES 51 MINUTES 05 SECONDS WEST A DISTANCE OF 78.77 FEET;
16. SOUTH 59 DEGREES 36 MINUTES 13 SECONDS WEST A DISTANCE OF 44.03 FEET;
17. SOUTH 67 DEGREES 22 MINUTES 07 SECONDS WEST A DISTANCE OF 82.77 FEET;
18. SOUTH 87 DEGREES 24 MINUTES 15 SECONDS WEST A DISTANCE OF 92.92 FEET;
19. NORTH 77 DEGREES 41 MINUTES 11 SECONDS WEST A DISTANCE OF 221.73 FEET;
20. SOUTH 70 DEGREES 06 MINUTES 50 SECONDS WEST A DISTANCE OF 79.91 FEET;
21. SOUTH 17 DEGREES 47 MINUTES 53 SECONDS WEST A DISTANCE OF 71.63 FEET;
22. SOUTH 20 DEGREES 22 MINUTES 04 SECONDS EAST A DISTANCE OF 68.81 FEET;
23. SOUTH 03 DEGREES 01 MINUTES 13 SECONDS WEST A DISTANCE OF 86.39 FEET;
24. SOUTH 14 DEGREES 13 MINUTES 11 SECONDS WEST A DISTANCE OF 103.23 FEET;
25. SOUTH 30 DEGREES 06 MINUTES 42 SECONDS WEST A DISTANCE OF 127.39 FEET;
26. SOUTH 30 DEGREES 38 MINUTES 30 SECONDS WEST A DISTANCE OF 220.08 FEET;
27. SOUTH 13 DEGREES 42 MINUTES 55 SECONDS WEST A DISTANCE OF 425.83 FEET;
28. SOUTH 24 DEGREES 16 MINUTES 13 SECONDS WEST A DISTANCE OF 222.75 FEET;
29. SOUTH 43 DEGREES 42 MINUTES 44 SECONDS WEST A DISTANCE OF 245.57 FEET;
30. SOUTH 38 DEGREES 48 MINUTES 26 SECONDS WEST A DISTANCE OF 287.20 FEET;
31. SOUTH 60 DEGREES 16 MINUTES 00 SECONDS WEST A DISTANCE OF 125.04 FEET;
32. SOUTH 84 DEGREES 04 MINUTES 35 SECONDS WEST A DISTANCE OF 89.08 FEET;
33. SOUTH 86 DEGREES 49 MINUTES 54 SECONDS WEST A DISTANCE OF 261.75 FEET;
34. NORTH 82 DEGREES 50 MINUTES 48 SECONDS WEST A DISTANCE OF 143.11 FEET;
35. NORTH 89 DEGREES 26 MINUTES 01 SECONDS WEST A DISTANCE OF 139.55 FEET;
36. SOUTH 46 DEGREES 42 MINUTES 48 SECONDS WEST A DISTANCE OF 192.93 FEET;
37. SOUTH 10 DEGREES 24 MINUTES 35 SECONDS WEST A DISTANCE OF 163.43 FEET;

JOB NO.: 09107S
DRAWN BY: SPA
SHEET 1 OF 6

TESSERA OVERALL PID TRACT
877.263 ACRES OUT OF THE
J. S. PEACOCK SURVEY NO. 202, ABSTRACT NO. 2469, TEXAS-MEXICO R.R. CO. SURVEY NO. 201, ABSTRACT NO. 2291, A. SYLVESTER SURVEY NO. 202, ABSTRACT NO. 2524, F.F. FAUBION SURVEY NO. 97, ABSTRACT NO. 2541 AND WILLIAM BRANDON SURVEY NO. 1 ABSTRACT NO. 47, TRAVIS COUNTY, TEXAS

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metro (817) 268-8000 fax (817) 282-2231 www.mla-survey.com

LINE TABLE

Course	Bearing	Distance
L1	S 33°12'06" W	618.10'
L2	S 26°57'39" E	452.84'
L3	S 16°52'30" E	366.98'
L4	S 05°20'44" E	327.61'
L5	S 16°44'09" E	387.91'
L6	S 10°12'56" W	672.28'
L7	S 35°14'57" W	659.99'
L8	S 16°48'54" W	928.89'
L9	S 53°47'38" W	531.05'
L10	S 21°55'01" W	1249.64'
L11	S 27°23'17" W	572.56'
L12	S 27°14'59" W	192.63'
L13	S 74°33'08" W	421.27'
L14	N 89°32'10" W	88.90'
L15	S 73°51'05" W	78.77'
L16	S 59°36'13" W	44.03'
L17	S 67°22'07" W	82.77'
L18	S 87°24'15" W	92.92'
L19	N 77°41'11" W	221.73'
L20	S 70°06'50" W	79.91'
L21	S 17°47'53" W	71.63'
L22	S 20°22'04" E	68.81'
L23	S 03°01'13" W	86.39'
L24	S 14°13'11" W	103.23'
L25	S 30°06'42" W	127.39'
L26	S 30°38'30" W	220.08'
L27	S 13°42'55" W	425.83'
L28	S 24°16'13" W	222.75'
L29	S 43°42'44" W	245.57'
L30	S 38°48'26" W	287.20'
L31	S 60°16'00" W	125.04'
L32	S 84°04'35" W	89.08'
L33	S 86°49'54" W	261.75'
L34	N 82°50'48" W	143.11'
L35	N 89°26'01" W	139.55'
L36	S 46°42'48" W	192.93'
L37	S 10°24'35" W	163.43'
L38	S 00°25'24" W	190.86'
L39	S 16°45'37" W	278.70'
L40	S 16°45'37" W	90.87'
L41	N 29°27'53" W	2516.33'
L42	N 10°28'55" W	899.62'
L43	N 49°14'34" E	482.59'
L44	N 34°21'18" E	1859.21'
L45	N 26°36'16" E	1103.91'
L46	N 26°36'15" E	1140.35'
L47	N 07°14'41" W	1076.01'
L48	N 14°03'02" E	419.01'
L49	N 03°16'01" W	383.69'
L50	N 26°33'36" W	2054.45'
L51	R= 622.67' Tan: 740.35' Chd: N 69°27'22" E	L= 1085.34' CA: 99°52'08" 953.07'
L52	N 19°31'18" E	471.71'
L53	R= 523.04' Tan: 276.41' Chd: N 47°32'51" E	L= 511.68' CA: 56°03'05" 491.52'
L54	N 75°36'20" E	112.66'
L55	R= 771.98' Tan: 114.05' Chd: N 84°00'34" E	L= 226.46' CA: 16°48'28" 225.65'
L56	S 68°57'36" E	95.64'
L57	R= 745.81' Tan: 91.00' Chd: S 73°27'50" E	L= 181.11' CA: 13°54'49" 180.67'

LINE TABLE (CONTINUED)

Course	Bearing	Distance
L58	S 78°16'01" E	95.64'
L59	R= 771.07' Tan: 11.22' Chd: S 58°49'06" E	L= 22.44' CA: 1°40'03" 22.44'
L60	S 57°52'51" E	561.89'
L61	R= 1187.78' Tan: 226.46' Chd: S 68°40'31" E	L= 447.56' CA: 21°35'21" 444.91'
L62	S 79°19'54" E	80.75'
L63	R= 524.88' Tan: 231.96' Chd: S 55°29'24" E	L= 436.82' CA: 47°41'00" 424.32'
L64	S 31°31'57" E	114.91'
L65	R= 1008.61' Tan: 208.12' Chd: S 43°11'30" E	L= 410.49' CA: 23°19'06" 407.66'
L66	S 54°55'51" E	261.77'
L67	R= 666.13' Tan: 399.12' Chd: S 24°00'07" E	L= 719.16' CA: 61°51'27" 684.74'
L68	S 06°54'33" W	78.67'
L69	R= 621.27' Tan: 311.45' Chd: S 19°42'59" E	L= 577.41' CA: 53°15'03" 556.85'
L70	S 46°22'27" E	96.87'
L71	R= 1441.34' Tan: 127.96' Chd: S 41°18'04" E	L= 255.25' CA: 10°08'48" 254.92'

JOB NO.: 09107S
DRAWN BY: SPA
SHEET 6 OF 6

TESSERA OVERALL PID TRACT
877.263 ACRES OUT OF THE
J. S. PEACOCK SURVEY NO. 222, ABSTRACT NO. 2428,
TEXAS-MEXICO R.R. CO. SURVEY NO. 291, ABSTRACT NO. 2231,
A. SYLVESTER SURVEY NO. 223, ABSTRACT NO. 2524,
F.F. FAULSON SURVEY NO. 97, ABSTRACT NO. 2541 AND WILLIAM
BRANDON SURVEY NO. 1 ABSTRACT NO. 47, TRAVIS COUNTY, TEXAS

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Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

EXHIBIT "B"

TESSERA DEVELOPMENT MAP

EXHIBIT "B"

DEVELOPMENT PLAN

The Property shown on the attached map (the "Tessera Development Plan Map") shall be developed for uses permitted in the PDD Zoning Ordinance, pursuant to approved Preliminary Plans, Site Development Plans and Final Plats. A phase or section of Tessera on Lake Travis may have a mix of uses as provided in this Development Plan, provided the areas in which each such use is permitted in a phase or section and the relationship of each separate use or occupancy to a different use or occupancy shall be provided on the recorded final plat, and appropriate setbacks or buffers shall be included between commercial, retail, multifamily, and recreational uses and areas to be developed for single family, attached single family and townhouse occupancies.

1. Land Use. This Development Plan includes the map attached hereto and made a part hereof for all purposes ("Tessera Development Plan Map").

   A. Area 1 shown on the Tessera Development Plan Map may be developed for a mixed use and may include retail, commercial office, multifamily, townhome, condominiums, single family attached and single family detached uses and park type uses, as specifically provided below. Areas designated for commercial, retail, or office uses be limited to those uses which shall comply with the zoning requirements and development standards of commercial zoning classification "C-1A" except as hereinafter specifically modified. Townhome uses, attached single family units or multifamily are allowed and shall comply with the zoning requirements and development standards of residential zoning classification "R-4" except as hereinafter specifically modified.

   B. Area 2 shown on the attached Tessera Development Plan Map shall be limited to residential, condominium and attached townhome uses as described herein, except as provided below.

   C. The following uses are allowed in Area 3: residential and attached townhome uses as described herein, except as hereinafter specifically modified. Amenity centers with a swimming pool, tennis courts, basketball courts, baseball and soccer play fields, decks, parking, trailhead facilities and other similar support facilities, including restaurant, and retail uses. Buildings comprising amenity center(s), dry stack boat storage facilities, and other support facilities shall comply with parks zoning classification "P-1B" standards. Restaurants and retail in stand-alone buildings shall comply with the zoning requirements and development standards of commercial zoning classification "C-1A" except as hereinafter specifically modified. Swimming pools, tennis courts, basketball courts, baseball and soccer play fields, decks, parking, public parks and trailhead facilities shall comply with parks zoning classification "P-1A" standards. Drainage areas, open space and other environmentally sensitive areas shall comply with parks zoning classification "P-2" standards. Each of these uses shall comply with the stated zoning requirements and development standards except as herein specifically

modified. Appropriate buffering will be provided between the dry stack boat storage and residential uses.

D. The single family residential lots for detached single family units shall comply with the zoning requirements and development standards for residential zoning classification "R-1G" (single family dwellings) except as hereinafter specifically modified. Attached single family units and attached townhome dwellings shall comply with the "R-4" zoning requirements and development standards, except as hereinafter specifically modified. Detached zero-lot line single family dwellings within shall comply with residential zoning classification "R-0" development standards.

E. Within Areas 1 and 2 the following uses are allowed: amenity centers with a swimming pool, tennis courts, basketball courts, baseball and soccer play fields, decks, parking, trailhead facilities and other similar support facilities. Buildings comprising amenity center(s), and other support facilities shall comply with parks zoning classification "P-1B" standards. Swimming pools, tennis courts, basketball courts, baseball and soccer play fields, decks, parking, public parks, and trailhead facilities shall comply with parks zoning classification "P-1A" standards. Drainage areas, open space and other environmentally sensitive areas shall comply with parks zoning classification "P-2" standards. Each of these uses shall comply with the stated zoning requirements and development standards except as herein specifically modified. Appropriate buffering will be provided between the dry stack boat storage and residential uses.

2. The City of Lago Vista shall have a public safety easement over all private streets and roadways which easement shall be described in subdivision plat or separate easement recorded in the Official Public Records of Travis County, Texas.

3. Each developed lot within the Property shall be served by the City of Lago Vista water and wastewater utility services. Wastewater utilities located within the Property, after acceptance of the wastewater system within the phase, are public utilities up to the point of connection to each lot's lot line. Water utilities, after acceptance of the water system within the phase, are part of the public system up to the point of connection to a private service meter.

4. Sidewalks shall not be required for areas with residential lots within the Property with a density of less than 6.5 units per acre. Sidewalks shall be required for all multifamily, non-residential, and single or two-family development having a density greater than 6.5 units per acre unless otherwise varied by the City Council based on a pedestrian pathways plan for walks and bikeways.

5. No street lights shall be required within this Property except for special lighting at critical locations and public gathering spaces to be designated by Developer. The Developer shall submit to the City Manager for approval a street light plan including light design and luminance specifications.

6. All site development must comply with the Highland Lakes Watershed Ordinance and City water quality regulations in effect on May 7, 2009.

7. Cut and/or fill slopes within the Property shall not exceed four feet (4') in height without a variance. All cut and fill variances in the Property may be approved administratively by the concurrence of the City Staff and City Engineer provided the cut and fill slopes greater than four feet (4') are appropriately sloped, terraced, or through installation of retaining walls to control erosion and sedimentation. All cut slopes must be stabilized in accordance with an approved geotechnical analyses provided to the City by a Professional Engineer. Site grading shall comply with accepted engineering practices, the Americans with Disability Act, and any other applicable federal, state, or regional regulations.

8. No oil drilling, extraction or removal of stone, gravel, caliche, minerals, earth or other natural material for commercial purposes shall be permitted.

9. No boats, recreational vehicles, or empty trailers may be parked outside on any residential lots within the Property.

10. No building or other structure, except a boat launch and boat docks necessary for access to Lake Travis, may be constructed within the Critical Water Quality Control zone of Lake Travis. Any access ramp necessary for boating operations into Lake Travis shall be approved, designed and constructed according to the standards of the Lower Colorado River Authority ("LCRA").

11. A maximum of 50% impervious coverage may exist on any detached single-family residential lot. This limit may be met on a lot basis or on a final plat basis. If computed on a final plat basis, the final plat shall contain no more than 50% impervious cover.

12. No single-family detached residence shall be constructed with less than 1,600 square feet of heated and cooled living area. No townhome or condominium unit shall be less than 1,200 square feet of heated and cooled living area. No apartment unit shall be less than 750 square feet. Off street parking for each detached single-family dwelling shall be consistent with city code requirements.

13. Maximum building height for any single family residential lot is thirty-five feet (35') above the highest point on the lot. Maximum building height for townhome lots is forty feet (40') above the highest point on the lot.

14. All residential and commercial structures shall have exterior facades constructed of a minimum 50% masonry.

15. Townhome development shall be restricted to a maximum 60% impervious cover limit. This limit may be met on a lot basis or a final plat basis. If computed on a final plat basis, the open space within the plat shall be common open space such that no more than 60% of the area within the townhome area plus the open space plat would be impervious cover.

16. The maximum building height for amenity center buildings within the Property shall not exceed two stories plus a daylight basement or a maximum of forty feet (40') above the highest point on the lot.

17. Within the Property, the following standards shall control over any contradictory requirements of the comprehensive zoning ordinance:

    A. Minimum building setbacks for residential lots within Area 1, 2, and 3 required to meet residential zoning classification "R-1G" standards are as follows:

        i. front yard setback is twenty feet (25');

        ii. rear yard setback is twenty feet (20'), except where the rear lot line is adjacent to common open space, then the rear yard setback is ten feet (10'); and,

        iii. side-yard setback is five feet (5'), except for zero lot line residential development.

    B. Minimum building setbacks for residential lots within Area 1, 2 and 3 required to meet residential zoning classification "R-0" or "R-4" standards are as follows:

        i. front yard setback is twenty feet (20'), provided the driveway is long enough for vehicles to park completely on the driveway without projecting into the street or other walking areas in the public right of way;

        ii. rear yard setback is twenty feet (20'), except where the rear lot line is adjacent to common open space, then the rear yard setback is ten feet (10'); and,

        iii. plats for or immediately adjacent to zero lot line development shall show a five foot (5') maintenance and drainage easement on the lot adjoining the "zero" side lot line, allowing for no less than ten feet (10') of area between dwellings in which no structure may be built.

18. For Areas 1 2 and 3, the lot requirements of the City's development standards shall apply, except for the following:

    A. The maximum building height for office buildings in Area 1 shall be fifty feet (50') from the highest point on the lot. Other commercial buildings shall conform to the height restrictions specified in commercial zoning classification "C-1A." height.

    B. The maximum building height for dry-stack boat storage facilities in Area 3 shall be forty feet (40') from the highest point on the lot. Reasonable efforts shall be made to minimize the visibility and profile of this facility using the natural terrain, natural architectural elements, and tree cover.

C. The dry-stack boat storage facility shall be allowed to store boats and boating-related equipment, boat handling equipment and materials, fuel for the operation of boats in approved containment and dispensing facilities, and boat repair and maintenance equipment.

19. The City may require right-of-way (ROW) along FM 1431 be dedicated for expansion of FM 1431. The amount of ROW, if required, shall be determined in consultation with TxDOT prior to approval of any plat with access to or adjoining FM 1431.

20. Driveways and street intersections along arterials and FM 1431 shall be no closer than 250 feet unless a TIA required by existing regulations calls for a greater separation. Adjacent parking lots along an arterial and FM 1431 shall be interconnected.

21. The road connecting the first preliminary plat area of the Project to FM 1431 will include a four (4) lane section and a two (2) lane section as depicted in the Exhibit "E" attached to the Restated Agreement ("Initial Entrance Road"). Phase I Developer may, at its sole option, submit construction plans for the Initial Entrance Road without a subdivision plat dedicating the right of way for the Initial Entrance Road. As a condition of the City's approval of the construction plans for the Initial Entrance Road, Phase I Developer will, at its sole option, dedicate the right of way plans for the Initial Entrance Road by either a separate instrument in a form approved by the City or by recorded plat. The City shall timely accept the Initial Entrance Road for ownership and operation if the Initial Entrance Road has been constructed in substantial compliance with the approved construction plans. So long as equipment used to construct major infrastructure (public roads, wet utility lines, water quality ponds and detention ponds) uses the Initial Entrance Road for entrance to and from the Property, the Initial Entrance Road will be maintained by Developers. Until the City accepts the Initial Entrance Road for maintenance, Phase I Developer will repair damages to the Initial Entrance Road caused by equipment used to construct major infrastructure for the Project; provided, however, that the City will be responsible to repair damages caused by public use of the road. Equipment, machinery and traffic uses associated with home building and site development is deemed to not be equipment used to "construct major infrastructure," as defined above. Once equipment used to construct major infrastructure is no longer driven on the Initial Entrance Road, Phase I Developer may request that the City accept the Initial Entrance Road for maintenance. So long as the Initial Entrance Road is in substantial compliance with the approved construction plans, the City shall timely accept the Initial Entrance Road for maintenance. The Initial Entrance Road will be the only road connection to FM 1431 for all development within Phase I of the Project. Notwithstanding any other provision in the City Code, a second entrance from the Project onto FM 1431 shall only be required once the daily trip reaches 3,480 trips based on actual traffic counts measured south of the traffic circle shown on the attached Exhibit "E". The Initial Entrance Road and the Second Entrance Road shall be the only two required public roads connecting the Project to FM 1431.

22. Traffic Analyses. The Developer has provided the City a Traffic Impact Analysis that addresses the intersection of the Initial Entrance Road and FM 1431. The Developer has provided the City a Daily Traffic Analysis for Phase 1 of the Project. The City has

reviewed and approved the Daily Trip Analysis to be used in conjunction with Phase 1 of the Project. The Initial Entrance Road, as depicted in Exhibit "C", has sufficient road capacity for the full build out of Phase I of the Project. The requirement to submit a traffic analyses with a preliminary plat application within Phase 1 of the Project has been satisfied. As a condition of the City's approval of the first final plat out of Phase 1 of the Project, Developer shall deliver to the City funds in an amount specified in the April 22, 2010 letter agreement between the City and the Developer regarding the funding of the improvements described in a letter from Department of Transportation ("TxDOT") to the City dated March 25, 2010. Developer shall fund one hundred percent of the costs of designing, engineering and constructing the improvements described in the AFA.

23. City Approval of Building Permits, Certificates of Occupancy, and Subdivision Plats.

A. The City shall process and act upon an application for the approval of a preliminary Subdivision Plan, and Site Development Plans, if such applications substantially comply with the rules applicable to such application.

B. The City will issue building permits for buildings to be constructed within a portion of the Property for which a final plat has been approved and recorded if the City has either accepted the completed subdivision infrastructure improvements for such phase, or the Developer has posted adequate fiscal surety for the subdivision infrastructure in a form approved by the City Manager of the City and Developer has begun construction of the subdivision infrastructure. The City will not issue a certificate of occupancy for any building until the City has accepted the subdivision infrastructure that serves the lot where the building is located. Model homes may be used for marketing purposes only prior to the issuance of a certificate of occupancy.

24. No building permits shall be issued on land for which a final plat has not been recorded, with the exception of construction and sales trailers or temporary facilities designed to prepare for, oversee, or manage the land planning, construction, or sales processes, which shall be removed upon or before the completion of the phase of development noted on an approved and recorded final plat.

25. Propane and Dry Utilities.

A. Notwithstanding any other provision of the City Code, the City approves installation of a propane or natural gas distribution system to serve platted lots within the Property, subject to approval of construction plans and acceptance of the completed propane system, in phases, by the City Engineer, and any necessary state regulatory approvals. The owner and operator of the propane or natural gas distribution system shall be required to obtain a franchise from the City prior to the installation and operation of the propane or natural gas distribution system. The franchise shall provide standard terms and provisions and for the payment to the City of a City franchise fee.

B. In areas where it may be inappropriate to cut the dry utility trench through rock, Developer shall provide the City plans for placing the dry utilities in an above-ground conduit covered by sufficient soil and vegetation to avoid exposure of the conduit. The City Manager or his designee may approve dry utilities at minimum depths per utility suppliers' standards, which approvals may include requirements to cap conduits in concrete.

26. The City tree preservation and landscape standards in effect as of May 7, 2009 shall apply to development within the Property.

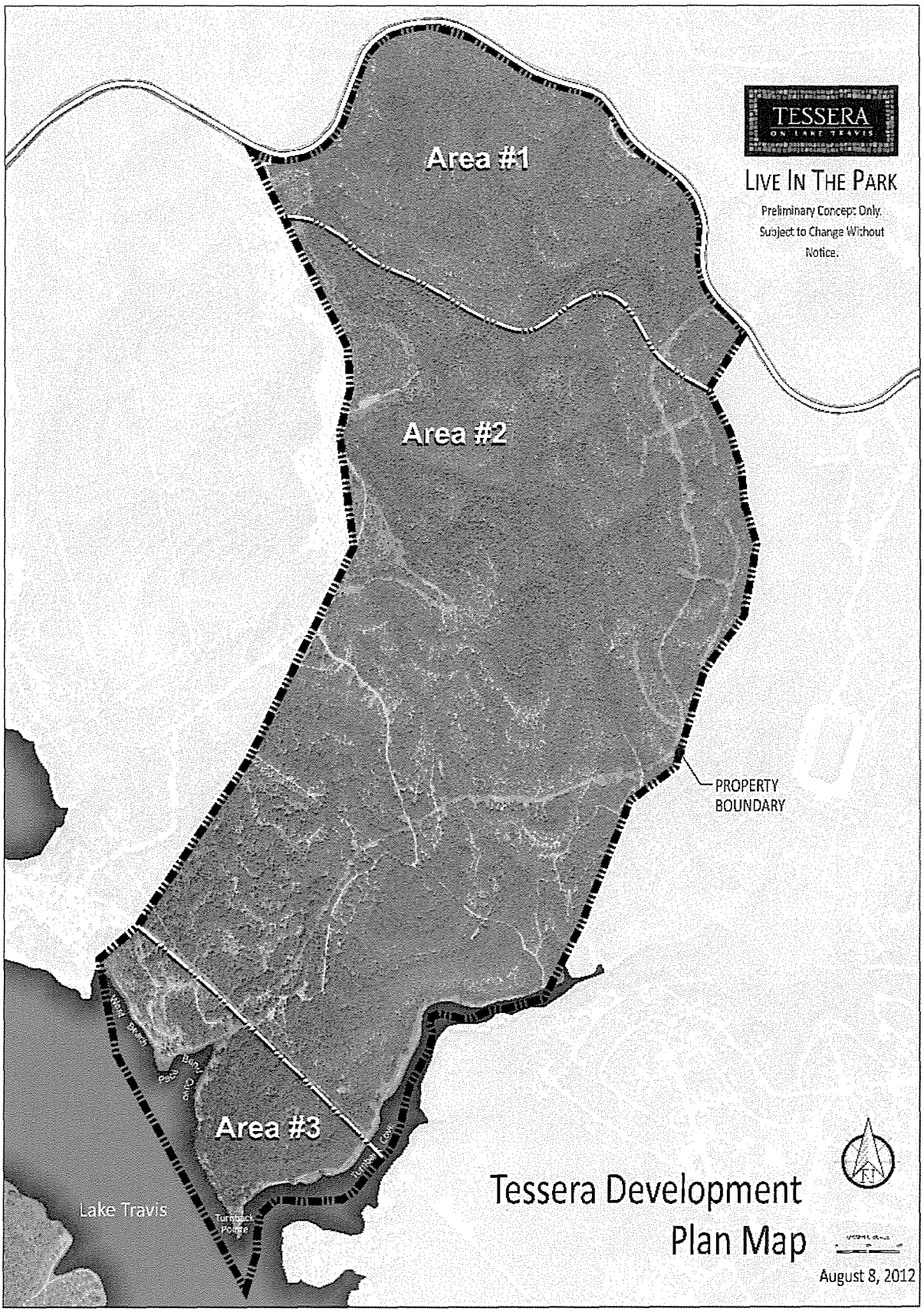
TESSERA
ON LAKE TRAVIS
LIVE IN THE PARK
Preliminary Concept Only.
Subject to Change Without
Notice.
Area #1
Area #2
Area #3
PROPERTY
BOUNDARY
Lake Travis
Tessera Development
Plan Map
August 8, 2012

EXHIBIT "C"
DESCRIPTION OF UTILITY FACILITIES

"Exhibit C"
DESCRIPTION OF UTILITY FACILITIES

This exhibit will lay-out the water and wastewater facilities necessary to provide City water and wastewater service to Tessera on Lake Travis ("Tessera"). The Utility Construction will be phased. The Phase I water and wastewater improvements will provide 490 LUE's of service to Tessera. As long as Developers construct the necessary off-site Utility Improvements and internal utility improvements necessary to serve platted lots, Developers may use the 2030 water and wastewater LUE's in any part of the Property at any time. Except as otherwise noted, all items listed below are Developer Improvements.

Basic Assumption:
Tessera has requested service for 2,030 water and wastewater LUE's from the City. Unless the City approves and authorizes additional LUE's of utility services for Tessera, the Utility Facilities are limited to 2,030 water and wastewater LUE's of service. The Tessera development will require 3 water pressure planes to provide acceptable pressure ranges within the Property. Except as otherwise noted, Developers are responsible for the construction of all other water and wastewater lines required to deliver service to individual lots within the Property.

Water Service Zones for Tessera Development

	MSL1 elevations	psi pressure
1. Lower Pressure Plane		
490 LUE's		
Tank Overflow	943.5	
service zone	840	47
	700	102
2. Middle Pressure Plane		
510 LUE's		
Tank Overflow	1079	
service zone	965	47
	840	101
3. Upper Pressure Plane		
1130 LUE's		
Tank Overflow	1135	
service zone	1020	48
	920	90

1 Mean Sea Level

Water Components

Phase I (490 LUE's)
The initial City service will be for 490 water and wastewater LUE's in lower water pressure plane.

Utility Improvements required to deliver water to the Phase I.

1. Construct + 9,000 L.F. of 12" High Density Poly Ethylene ("HDPE") transmission line from WTP No 1 to the street intersection of Brewer Lane and Deepwood Drive.

2. Construct + 8,000 L.F. of 14" HDPE transmission line from street intersection of Brewer Lane and Deepwood Drive to the south end of Tessera Parkway.

3. Inter-connect new pipelines described in 1. and 2. above to existing COLV water system to circulate flow to improve water quality to Tessera. Tie in point location is Bar-K Ranch Road and other tie-points at the City's discretion.

4. Construct + 4,100 L.F. of 12" HDPE transmission line from the south end of Tessera Parkway to the Tessera West Ground Storage Tank site.

5. Construct 125,000 gallon ground storage tank at the Tessera West GST site.

Recommend a standard 24-foot high tank, approximately 30 ft. diameter.

Design; Ground Storage Tank (GST)			
Lower P.P treated as elevated	490 LUE's x 100 gals/LUE	=	49,000
Fire Flow at 1,000 gpm for 1 hour			60,000
			109,000
Phase I	125,000 gallon tank		

6. Add two pumps next to the existing booster pump building at WTP No. 1; minimum capacity of each pump is 500 gpm; add scada system and control valves at City WTP
No. 1. Pumps can be installed outside, next to the existing pump building.

Note. Initial low consumption will require re-circulations and re-chlorination at the Tessera West GST. Low flows will require the City to flush the transmission line once or twice a week until the Tessera Phase I Development has at least 80 to 100 water connections. With the City's concurrence, irrigation connections within the Tessera Development will be allowed. Also, the location of the initial connections (houses) will have an impact on the need of flushing. The City will bill the Developer the wholesale cost of the water flushed.

Phase II Middle P.P. (510 LUE's)

Service to the remainder of Tessera, including the Middle P.P. and Upper P.P. (1540 LUE's)* may required the completion of WTP No.3 Improvements to be constructed by the City. The City is responsible for initiating the construction of WTP No. 3. In conjunction with the construction of WTP No. 3, the City will construct the WTP No. 3 pumps and transmission line from the WTP No. 3 site to the Lohmans water tank shown on Exhibit B.

Developer Improvements required for water service to Middle P.P. and upper P.P.:

1. Construct + 8,000 L.F. of 16" HDPE transmission line from street intersection of Brewer Lane and Deepwood Drive to the south end of Tessera Parkway.

2. Construct + 5,400 L.F. of 14" and 16" HDPE transmission line from the south end of Tessera Parkway to the ground storage tank site (referred to as the Tessera East GST site).

3. Construct 2,000 L.F. of 16-inch water line from Lohmans tanks to the combination valve at the Cedar Ridge tank site.

4. Install a combination control valve for rate-of-flow and pressure reducing next to Cedar Ridge tank site.

5. Construct 1,500 L.F. of 16-inch water line from Cedar Ridge control valve west to the intersection of Brewer Lane and Deepwood Drive to tie into the 14-inch transmission line constructed in Phase I and the 16-inch water transmission line constructed with Phase II. Upon completion of the above described water lines and the combination control valve, Developers will have completed all off-site Developer Water Improvements for the delivery of 2030 LUE's to the Property.

6. The remaining Phase II Developer Improvements are required for delivery of water service within the Property.

Design; GST capacity required at East GST site.		
Middle P.P.		
hydro-pneumatic system		
servicing 510 LUE's		
Treated as ground storage	510 LUE's x 200 gals/LUE =	120,000
Upper P.P.		
pass through at	1030 LUE's x 50 gals/LUE =	51,500
		220,500
Fire flow at 1500 gpm for 2 hours (less 60,000 gals from Ph.1)		120,000
Phase II Storage Required		340,500 gals

7. Construct multiple GSTs for an additional 350,000 gallons at the East GST site.

8. Construct Hydro-pneumatic system to serve Tessera middle pressure plane. The Hydro system will take water from the east Tessera GST.

Design; Service to 510 LUE's:
Hydro pressure tank min. cap. @ 510 LUE's x 20 gals = 10,200 gals
The system may be phased with 2-tanks; 6,000 gals initially and 5,000 gals added.
Hydropump capacity; 2-pumps each at 550 gpm for domestic demands and a 3rd pump at 550 gpm to meet fire flow of 1500 gpm

Phase II, Upper P.P. (1130 LUE's)

Developer Improvements required for sufficient water pressure in the Upper P.P.

Construction required:

1. Construct Elevated Tank 300,000 gallon capacity.
   Design; Elevated tank capacity:
   Service: 1130 LUE's at 100 gals/LUE = 113,000 gals
   Fireflow (serving commercial and multi-family):
   1500 gpm for 2 hours 180,000 gals
   293,000 gals

2. 3,200 L.F. of 16-inch water line from the east Tessera GST to the Tessera Elevated Water Tank (EST).

3. Booster Pump Station pumping to EST, pumps located at Tessera (East) GST site
   Design; Phase with 3-500 gpm pumps initially
   Complete with 4 Pumps total with 3 pumps producing 1500 gpm for daily use
   4th pump stand-by

Wastewater Components

The wastewater collection line design described below assumes that a) the wastewater system will also be developed in phases coinciding with the water pressure planes; and b) the number of LUE's per pressure plane. If Developers intend to reallocate the number of LUE's among the pressure planes, the sizing and location of the internal wastewater lines may need to be re-evaluated.

Off-site wastewater utilities necessary to service the Property: Phase I for 490 LUE's, Phase II Middle P.P. (510 LUE's) and Phase II Upper P.P. (1030 LUE's) for the Tessera Development

Wastewater Components
Tessera wastewater lines are sized to serve by pressure planes based on the above LUE's.

Phase I
1. Wastewater Treatment Plant improvements at plant headworks. Construct force main header to combine multiple force mains entering plant.

2. Cost participate in the amount of $173,200 with City on over-sizing the force main from the Hollows, increase force main to 14-inch approximately 3,650 l.f. Phase II 12-inch force main will tie into this line at Dawn Drive and Valley View.

3. Utilize City's existing 12-inch wastewater force main from existing Bar-K Lift Station to Turner's Lift Station.

4. Upgrade existing Bar-K Wastewater Lift Station and the Turner Lift Station with increased pump capacity, add odor control and add scada control.

5. Utilize City existing 8-inch wastewater force main in Bar-K Ranch Road.

6. Force mains from Tessera development to the City's 8-inch force main in Bar-K Ranch Road. (Wastewater force main sizing and phasing to be verified by design engineer.)
The following sizes are based on an analysis of flow.
a) Phase I, Lower P.P. construct approximately 6,500 l.f. of 8-inch HDPE wastewater force main from Burnet Trail in the Tessera development to Bar-K Ranch Road.

7. Construct low pressure wastewater force main at Lake crossing 3-8" HDPE wastewater force main.

8. Construct 8-inch HDPE low pressure wastewater force main to Burnet Trail.

Phase II

9. Construct off-site lift station near the existing Bar-K Lift Station (L.S.)
a) Tessera L.S. will require new site. Recommend Lot 3095 Bar-K Section 3, next to existing L.S.
b) Wet well:
Design; Wet well capacity and elevations:
12-foot diameter
26-foot deep
Bottom elevation 697
Top elevation 723
Flowline in for existing gravity line (approx.) elev. 708
c) Lift Station pumps to be phased.
Require 3 pump layout.

Design; Pumps
- Initially install (2) high head pumps
Add 3rd pump based on build-out, to be determined by City.

d) Details: Standby generator (size for 3 pumps), odor control, new electrical and scada controls, etc.

e) Connect discharge to the new 12-inch force main from Bar-K L.S. pumping to the Dawn Drive, tie into over-sized (12") Hollows force main.

10. Force mains from Tessera development to off-site new Bar-K L.S. (Wastewater force main sizing and phasing to be verified by design engineer.)

The following sizes are based on an analysis of flow.

a) Phase II, Lower P.P. construct 8-inch HDPE force main from Bar-K Lift Station to phase I 8-inch HDPE at Surrey Lane and Bar-K Ranch Road.

b) Phase II, Middle P.P. construct 8-inch HDPE force main from Bar-K Lift Station to middle P.P.

b) Phase II, Upper P.P. construct 8-inch HDPE force main from Bar-K Lift Station to upper P.P.

11. Wastewater Force Main (FM) from Bar-K Lift Station (LS) to Wastewater Treatment Plant (WWTP)

a) New Bar-K Lift Station (wastewater component no. 9 above) shall be sized with high head pumps to pump all the way to the WWTP.

b) Construct 12-inch force main from Bar-K Lift Station to Dawn Drive and tie into 12-inch over-sized force main constructed in Phase I for Hollow wastewater service.

12. Construct 8-inch wastewater force main from Surrey Lane to Bar-K Lift Station parallel to the existing City 8-inch wastewater force main at the same location.

Water System and Water Facilities

EXHIBIT "D"

Map of Water and Wastewater Lines and the Location of Other Utility Improvements

EXHIBIT "D"
UTILITY PLAN
TESSERA ON LAKE TRAVIS
ALL PHASES
HAVNIE CONSULTING, INC
Civil Engineers and Land Surveyors
1010 Nwylene Lane
Round Rock, Texas 78664-3276
Ph. 512-837-2446 Fax 512-837-9463
WATER INFRASTRUCTURE IMPROVEMENTS
WASTEWATER INFRASTRUCTURE IMPROVEMENTS
NOTE
PIPE SIZES ARE I.D. MIN UNLESS SIZE IS FOLLOWED BY HDPE (O.D. CALLED OUT)
TESSERA ON LAKE TRAVIS
CEDAR BREAKS (CITY OF LAGO VISTA)
MAHOGANY
LEGEND
EXISTING LINE
PHASE 1 WATER MAIN
PHASE 1 WW FORCE MAIN
PHASE 2 WATER MAIN
PHASE 2 WW FORCE MAIN
WW WASTEWATER
F.M. FORCE MAIN
GST GROUND STORAGE TANK
EST ELEVATED STORAGE TANK
DATE: AUG. 3, 2012
SHEET NUMBER: 1 OF 1

EXHIBIT "E"

Phase 1 Development Area and Description of the Initial Entrance Road

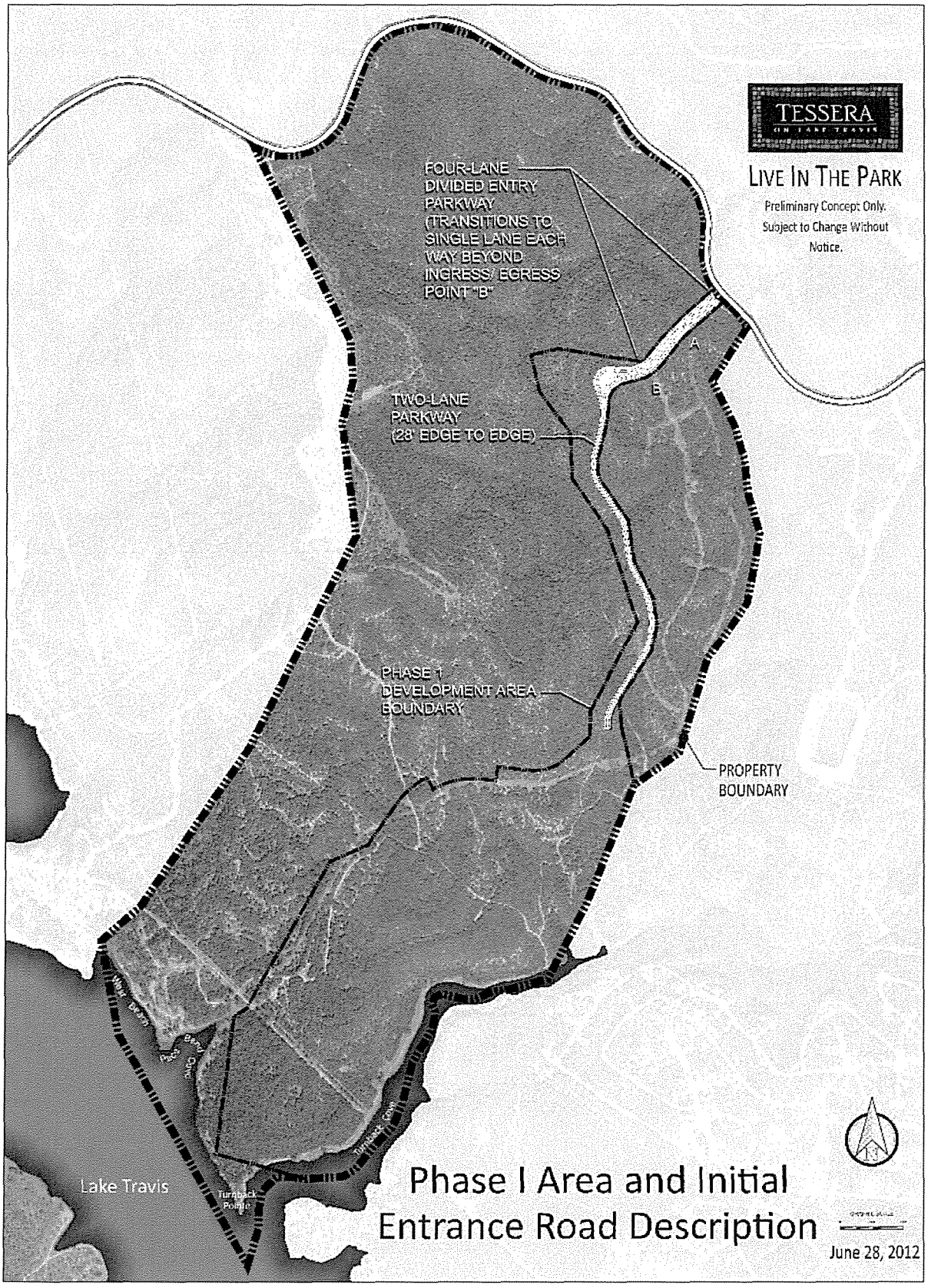
TESSERA
ON LAKE TRAVIS
LIVE IN THE PARK
Preliminary Concept Only.
Subject to Change Without
Notice.
FOUR-LANE
DIVIDED ENTRY
PARKWAY
(TRANSITIONS TO
SINGLE LANE EACH
WAY BEYOND
INGRESS/ EGRESS
POINT "B"
A
B
TWO-LANE
PARKWAY
(28' EDGE TO EDGE)
PHASE 1
DEVELOPMENT AREA
BOUNDARY
PROPERTY
BOUNDARY
Lake Travis
Turnback
Pointe
Phase I Area and Initial
Entrance Road Description
June 28, 2012

EXHIBIT "F"
Right of Way License Agreement

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

EXHIBIT "F"
LICENSE AGREEMENT

The City of Lago Vista, a Texas home-rule municipal corporation and political subdivision of the State of Texas situated in Travis County, Texas (the "**City**"), and _____ _____ (the "**Licensee**"), enter into this License Agreement ("**Agreement**") on this the _____ day of _____, 20__, upon the terms and conditions set forth below.

PURPOSE OF LICENSE AGREEMENT. The City grants to Licensee permission to use the property, located within the right-of-way of public streets within or abutting the Tessera on Lake Travis Subdivision ("**Tessera**") at the location(s) shown on the map attached hereto as **Exhibit "A"** and incorporated herein for all purposes (the "**Licensed Property**"), for the following purposes only: (1) the installation and maintenance of a signs identifying Tessera and providing related information, _____ inches tall and ___ inches wide, located not less than ____ feet from the edge of the pavement (the "**Signs**"); (2) the installation of landscaping including approved hard scapes; (3) the installation of an irrigation system for the landscaping; and (4) the repair, maintenance and replacement of the Sign, landscaping and irrigation system, within right-of-way of public streets within or abutting Tessera at the location(s) shown on Exhibit "A" hereto. The Sign, landscaping and irrigation system are sometimes collectively referred to herein as the "**Improvements**" and it is specifically provided that Improvements may not be placed within the right-of-way of a State maintained road or street.

The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

Licensee agrees that all construction installation and maintenance permitted by this Agreement shall be done in compliance with plans and specifications approved in writing by the City Engineer and all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

Any provision herein to the contrary notwithstanding, Licensee shall be liable for, and shall indemnify and hold the City harmless from all damages, causes of action, and claims arising out of or in connection with Licensee's installation, operation, maintenance or removal of the Improvements permitted under this Agreement.

II. ANNUAL FEE. No annual fee shall be due in connection with this License Agreement.

III. CITY'S RIGHT TO LICENSED PROPERTY. This Agreement is expressly subject and subordinate to the present and future right of the City, its successors, assigns, lessees, grantees, and Licensee, to construct, install, establish, maintain, use,

operate, and renew any public utilities facilities, franchised public utilities, rights-of-way, roadways, or streets on, beneath, or above the surface of the Licensed Property. The uses of the Licensed Property are subject to the City's right to interfere with or destroy Licensee's use of the Licensed Property, or any property or the Improvements placed thereon or therein by Licensee, if such use or action is determined necessary by the City.

Notwithstanding any provision of this Agreement to the contrary, the City retains the right to enter upon the Licensed Property, upon fifteen (15) days' notice except in the event of an emergency, and assuming no obligation to Licensee, to remove any of the Improvements or alterations thereof whenever such removal is deemed necessary for: (a) exercising the City's rights or duties with respect to the Licensed Property; (b) protecting persons or property; or (c) the public health or safety.

IV. INSURANCE. Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than $600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. The City may require the Licensee to increase the combined single limit of such coverage from time to time in the discretion of the City. Such insurance coverage shall specifically name the City as an additional-insured. The insurance shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement. Licensee shall be responsible for any deductibles stated in the policy. A true copy of each such policy shall be delivered to the City Manager of City on or before the Licensee's use or occupancy of the Licensed Property.

Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until forty-five (45) days after the City has received written notice as evidenced by a return receipt of registered or certified mail.

V. INDEMNIFICATION. Licensee shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by the Licensee's construction, maintenance or use of the Licensed Property. This indemnification provision, however, shall not apply to any claims, suits, damage, costs, losses, or expenses (i) for which the City shall have been compensated by insurance provided under Paragraph IV, above, or (ii) arising solely from the negligent or willful acts of the City; provided that for the purposes of the foregoing, the City's entering into this Agreement shall not be deemed to be a "negligent or willful act."

VI. CONDITIONS:

A. Licensee's Responsibilities. Licensee will be responsible for any and all damage to or relocation of existing facilities. Further, Licensee shall reimburse the City for all costs of replacing or repairing any property of the City, or of others, that is damaged by or on behalf of Licensee as a result of activities under this Agreement.

B. Maintenance. Licensee shall maintain the Licensed Property by keeping the area free of debris and litter. Removal of dead or dying plants shall also be handled by Licensee at its expense. Further, the City may require Licensee to take action to maintain the Licensed Property including, but not limited to, the removal of dead or dying vegetation. Such removal shall be completed within thirty (30) days following receipt of a written request from the City.

C. Removal or Modification. Licensee agrees that removal or modification of any of the Improvements now existing or to be later placed on the Licensed Property shall be at Licensee's expense. Provided the City has given prior written approval of the plans and specifications for the Improvements, said removal or modification shall be at Licensee's sole discretion.

D. Default. In the event that Licensee fails to maintain the Licensed Property or otherwise comply with the terms or conditions as set forth herein, the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and, if Licensee does not satisfactorily remedy the same within the thirty (30) day period, the City may perform the work or contract for the completion of the work. Licensee agrees to pay within thirty (30) days of written demand by the City, all reasonable costs expenses incurred by the City in completing the work.

City Address: City of Lago Vista
Attn: City Manager
P. O. Box 4727
Lago Vista, Texas 77970-0178

with copy to: McKamie Krueger, LLP
Attorneys at Law
223 West Anderson Lane, #A105
Austin, Texas 77852
Telephone: (512) 323-5778
Facsimile: (512) 323-5773
Email: attorneys@cityattorneytexas.com

Licensee's Address: _____ _____ _____ _____ _____

_____ _____ _____ _____ _____
_____ _____ _____ _____ _____
_____ _____ _____ _____ _____

with copy to: _____ _____ _____ _____ _____
_____ _____ _____ _____ _____
_____ _____ _____ _____ _____
_____ _____ _____ _____ _____

VII. COMMENCEMENT AND TERMINATION BY ABANDONMENT. This Agreement shall begin with the effective date and continue thereafter for so long as the Licensed Property shall be used for the purposes set forth herein. If Licensee abandons the use of all or any part of the Licensed Property for the purposes set forth in this Agreement, this Agreement shall expire and terminate, as to the portion or portions abandoned, following thirty (30) days written notice by the City to the Licensee or by Licensee to the City. If all or a part of the Licensed Property is abandoned by Licensee, the City shall thereafter have the same complete title to the Licensed Property so abandoned as though this Agreement had never been made, and shall have the right to enter on the Licensed Property and terminate the rights of Licensee, its successors and assigns hereunder, to the abandoned part of the Licensed Property. All installations of Licensee on a portion of the Licensed Property that is abandoned shall be deemed property of the City unless removed with the consent of the City; provided, however, if subsequently, a new license agreement is executed, all such Improvements will be available for use by Licensee without fee or charge. This provision will survive the termination of this Agreement.

VIII. TERMINATION:

A. Termination by Licensee. This Agreement may be terminated by Licensee by delivering written notice of termination to the City not later than thirty (30) days before the effective date of termination. If Licensee terminates, then it shall remove all installations that it made from the Licensed Property within the thirty day notice period, at its sole cost and expense. Failure to do so shall constitute a breach of this Agreement.

B. Termination by City. Notwithstanding any other term, provision or condition of this Agreement, subject only to prior written thirty (30) days' notification to Licensee or its successor-in-interest, this Agreement is revocable by the City if:

1. The Improvements, or a portion of them, interfere with the City's right-of-way;

2. Use of the Licensed Property becomes necessary for a public purpose;

3. The Improvements, or a portion of them, constitute a danger to the public which the City deems not be remediable by alteration, repair or maintenance;

4. Despite thirty (30) days written notice to Licensee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or

5. Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to the insurance requirements specified herein.

If Licensee abandons or fails to maintain the Licensed Property, and the City receives no substantive response within thirty (30) days following written notification to Licensee, then the City may remove and/or replace all of the Improvements and collect from Licensee the City's actual expenses incurred in connection therewith.

IX. EMINENT DOMAIN. If eminent domain is exerted on the Licensed Property the City will, to the extent permitted by law, cooperate with Licensee to effect the removal of Licensee's affected installations and the Improvements thereon, at Licensee's sole expense. Licensee shall be entitled to retain all monies paid by the condemning authority to Licensee for Licensee's installations taken, if any.

X. INTERPRETATION. This Agreement shall, in the event of any dispute over its intent, meaning or application, shall be interpreted fairly and reasonably, and neither more strongly for or against either party.

XI. APPLICATION OF LAW. This Agreement shall be governed by the laws of the state of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

XII. VENUE. Venue for all lawsuits concerning this Agreement will be in Travis County, Texas.

XIII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT. This Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time by written instrument, without affecting or impairing any right arising from any subsequent or other default.

XIV. ASSIGNMENT. It is anticipated this License Agreement will be assigned to a Home Owner's Association whose Articles of Incorporation and Bylaws have been approved by the City. However, Licensee shall not assign, sublet or transfer its interest

in this Agreement without the written consent of the City, which consent shall not be unreasonably withheld. Subject to the assignee's compliance with the insurance requirements set forth herein, if any, Licensee shall furnish to the City a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, address, and contact person of the assignee, along with the date of assignment or transfer. The assignment shall not be or become effective until approved in writing by the City Manager of the City.

TERMS AND CONDITIONS ACCEPTED, this the _____ day of _____, 20__.

LICENSOR:

City of Lago Vista, Texas

By:
Name:
Title: City Manager

LICENSEE:

By:
Name:
Title:

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 20__, by _____, City Manager, City of Lago Vista, Texas, on behalf of the City.

Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, 20__, by _____ of _____, a _____, on behalf of said _____.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:
City of Lago Vista
Attn: City Secretary
P. O. Box 4727
Lago Vista, Texas 78645-0178

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
Dana DeBeauvoir
Dec 11, 2014 12:04 PM 2014184192
CLINTONB: $342.00
Dana DeBeauvoir, County Clerk
Travis County TEXAS