

CONVEYANCE OF RETAINED FACILITIES AGREEMENT

This Conveyance of Retained Facilities Agreement ("Agreement") is entered into effective as of the _____ day of _____, 2015 (the "Effective Date"), by and between WESTWOOD MANAGEMENT DISTRICT (the "District"), a political subdivision of the State of Texas duly created by Senate Bill 1884, 83rd Regular Session of the Texas Legislature, codified at Chapter 3917, Texas Special District Local Laws Code (the "Act"), and, in addition, operating pursuant to the Act, Chapter 375, Texas Local Government Code, and Chapter 49, Texas Water Code, and the WESTWOOD HOMEOWNERS' ASSOCIATION (the "HOA"), a Texas nonprofit corporation. The District and the HOA are sometimes hereinafter referred to singularly, as "Party", and collectively, as "Parties".

RECITALS

WHEREAS, the District has been created within the corporate limits of the City of League City, Texas (the "City"), for the purposes of, among other things, providing water distribution, wastewater collection and drainage facilities, road facilities, and park and recreational facilities (as more fully defined below, the "Facilities"), to serve development occurring within and near that portion of the City situated within the boundaries of the District, by financing the acquisition and construction of the Facilities;

WHEREAS, the "Facilities" shall mean and include any and all facilities that the District is authorized by law to construct, acquire, or purchase, including, without limitation, water supply, treatment, storage and distribution facilities; sanitary sewer collection, transportation and treatment facilities; stormwater collection, detention, and drainage systems; transportation network of roads, sidewalks, trails, and associated enhancements; and recreational amenities, parks and green spaces constructed or acquired or to be constructed or acquired by the District to serve lands within and adjacent to its boundaries, and all improvements, appurtenances, additions, extensions, enlargements or betterments thereto, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites and other interests related thereto, including those facilities more fully described in any preliminary engineering reports prepared by the District's consulting engineers;

WHEREAS, the District and the City are in the process of negotiating that certain Interlocal Project Development and Financing Agreement (the "Interlocal Agreement"), which will contain various agreements and conditions related to the development of the District and the construction and acquisition of the Facilities;

WHEREAS, the District will finance the acquisition and construction of the Facilities, but, unless otherwise requested in writing by the City, the District will only convey to the City the Facilities related to the provision of water and sewer service, roadways and related facilities, and sidewalks (collectively, the "Conveyed Facilities"), which such conveyance(s) shall occur in accordance with the final Interlocal Agreement;

WHEREAS, all Facilities that are not Conveyed Facilities shall be retained by the District until such time as the District is dissolved (such Facilities being the "Retained Facilities"), as more fully set forth herein;

WHEREAS, the City has requested that the Parties enter into this Agreement to ensure that the City does not have any responsibility or liability for the Retained Facilities upon the dissolution of the District, except as to the City Facilities (as defined in Section 3.c. below), if any; and

WHEREAS, the District desires to convey the Retained Facilities to the HOA prior to its dissolution and the HOA desires to accept such conveyance, as more fully set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

AGREEMENT

1. Effectiveness. This Agreement shall become binding on the Parties as of the Effective Date, and shall continue in full force and effect until the date that all Retained Facilities have been conveyed by the District to the HOA; provided, however, that should the City request in writing that the District convey all or any portion of the Retained Facilities to the City rather than the HOA, this Agreement shall terminate upon the conveyance by the District to the HOA of all Retained Facilities that are not City Facilities.

2. Recitals. The Parties agree that the Recitals of this Agreement contained above are true and correct in all material respects, and agree that such Recitals shall be fully incorporated herein by this reference.

3. Conveyance of Retained Facilities.

a. The District agrees to convey, and the HOA agrees to accept conveyance of, all of the Retained Facilities (excepting the City Facilities, if any) no later than the earlier of the following: (1) the 45th day after receipt of a written notice from the City that the City is dissolving the District; (2) the date set by the City for the dissolution of the District; or (3) the date set forth in the Act for the dissolution of the District (currently December 31, 2037). The Parties covenant and agree to take all necessary actions to timely effect such conveyance(s) of the Retained Facilities (such date being the “Conveyance Deadline”).

b. The Parties agree that, until the Conveyance Deadline, the District shall have the right, in its sole discretion, to retain for itself or to convey all or any portion of the Retained Facilities to the HOA upon providing 30 days’ written notice to the HOA of same.

c. Notwithstanding anything to the contrary in Section 3.a. above, should the City request in writing that the District convey all or any portion of the Retained Facilities to the City (the “City Facilities”), the Parties agree that the District shall convey facilities to the City within thirty (30) days of the District’s receipt of such request (but no later than the Conveyance Deadline), and the HOA shall not be entitled to any such City Facilities. The District agrees to provide the HOA with a copy of any such written request of the City within a reasonable time of receipt of same, which such time period shall not exceed 45 days.

d. All conveyances of the Retained Facilities to the HOA shall be made by special warranty deed or bill of sale and be made **AS-IS, WHERE-IS AND WITH ALL FAULTS**. The HOA

agrees that it shall maintain the Retained Facilities in good and working condition from and after the date of its acceptance of the Retained Facilities. Further, the HOA understands and agrees that it shall be liable for the Retained Facilities from and after the date of its acceptance of the Retained Facilities and that it shall provide the indemnity set forth herein with regard to same. **Notwithstanding anything to the contrary in Section 1 hereof, this Section 3.d. shall survive the termination or expiration of this Agreement.**

e. All documents necessary for the conveyance of the Retained Facilities to the HOA shall be in a form acceptable to both the District and the City, and all documents necessary for the conveyance of the City Facilities to the City shall be in a form acceptable to the City.

4. INDEMNITY. THE HOA SHALL PROTECT, INDEMNIFY AND SAVE AND HOLD THE DISTRICT AND THE CITY (AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, AND AFFILIATES) HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITIES OF ANY KIND AND CHARACTER, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES ON ACCOUNT OF INJURIES OR DAMAGES TO ANY PERSON OR PROPERTY IN ANY WAY ARISING OUT OF OR RELATING TO THE RETAINED FACILITIES ACCEPTED BY THE HOA PURSUANT TO THIS AGREEMENT; PROVIDED, HOWEVER, THAT SUCH INDEMNITY SHALL ONLY BE EFFECTIVE FROM AND AFTER THE DATE OF THE HOA'S ACCEPTANCE OF SUCH RETAINED FACILITIES.

Notwithstanding anything to the contrary in Section 1 hereof, this Section 4 shall survive the termination or expiration of this Agreement.

5. City as Third-Party Beneficiary. The Parties understand and agree that the City shall be considered an intended third-party beneficiary of this Agreement. The City shall have the right to file suit to ensure that the HOA accepts the conveyance of the Retained Facilities prior to the dissolution of the District or to enforce its right to receipt of the City Facilities.

6. Representations and Warranties and Covenants of the Parties.

a. As of the Effective Date, the District represents, warrants and covenants as follows:

- i. it is a political subdivision of the State of Texas organized, validly existing and operating under the laws of the State of Texas, including particularly the Act, Chapter 375, Texas Local Government Code and Chapter 49, Texas Water Code;
- ii. it has full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms and provisions hereof;
- iii. the form, execution, delivery and performance of this Agreement have been duly authorized by all necessary action and do not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which the District is a party or by which it or any of its properties may be bound; and

- iv. this Agreement is a legal, valid and binding obligation of the District enforceable against the District in accordance with its terms except that enforceability of the District's obligations hereunder may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

b. As of the Effective Date, the HOA represents, warrants and covenants as follows:

- i. it is a non-profit corporation duly organized, validly existing and operating under the laws of the State of Texas and validly authorized to transact business in the State of Texas;
- ii. it has full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms and provisions hereof;
- iii. the form, execution, delivery and performance by the HOA of this Agreement have been duly authorized by all necessary action and do not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which the HOA is a party or by which it or any of its properties may be bound; and
- iv. this Agreement is a legal, valid and binding obligation of HOA enforceable against the HOA in accordance with its terms except that enforceability of the HOA's obligations hereunder may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

c. The covenants, warranties and representations of the Parties stated herein shall expressly survive any closing occurring under the terms of this Agreement.

7. Notices. Any notice to be given under this Agreement shall be given in writing and may be given either by depositing the notice in the United States mail postpaid, registered or certified mail, with return receipt requested; or delivering the notice to an officer of such Party. Notice deposited by mail in the foregoing manner shall be effective the day after the day on which it is deposited. Notice given in any other manner shall be effective only when received by the Party to be notified. For the purposes of notice, the addresses of the Parties shall be as follows:

If to the District, to:

Westwood Management District
c/o Hawes Hill Calderon LLP
Attn: Mr. David Hawes
P.O. Box 22167
Houston, Texas 77227-2167

If to the HOA, to:

Westwood Homeowners' Association
c/o LPI Property Management
P. O. Box 3217
Pearland, Texas 77588

8. Miscellaneous.

a. Time. Time shall be of the essence in all things pertaining to the performance of this Agreement.

b. Entire Agreement. This instrument shall represent the entire agreement by and between the Parties except as otherwise provided for herein, and it may not be changed except by written amendment duly executed by the Parties.

c. Severability. If any provision of this Agreement shall, for any reason, be held violative of any applicable law, the invalidity of such specific provision shall not be held to invalidate any other provision hereof, and the remaining provisions hereof shall remain in full force and effect.

d. Assignment. This Agreement shall not be assignable by either Party without the prior written consent of the other Party.

e. Authority. The persons executing this Agreement on behalf of the Parties warrant and represent: (i) that they have the full and complete power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such person, and (ii) that all formal requirements necessary or required by any local, state and/or federal law required to execute this Agreement have been fully satisfied.

f. Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be deemed to be an original, but all of which taken together shall constitute but one Agreement, and the signature pages of which may be removed and aggregated to form one single Agreement reflecting execution by both Parties.

[Signature pages follow]

WESTWOOD MANAGEMENT DISTRICT

By: _____

Name: _____

Title: President, Board of Directors

Date: _____

WESTWOOD HOMEOWNERS' ASSOCIATION

By: _____

Name: _____

Title: _____

Date: _____